# RP JANFEB CARD FILE

Resolved: Public colleges and universities in the United States ought not restrict any constitutionally protected speech.

## Definitions

### United States

#### “United States” means the federal government;

**Ballentine writes:** Ballentine's Legal Dictionary and Thesaurus, "United States," 1995, p. 689

**United States 1. The federal government. 2. A sovereign nation or sovereign state called the "United States." 3. Territory over which this sovereign nation called the "United States" exercises sovereign power.**

#### The United States means the federal government.

**Mitchell:** Mitchell, Paul Andrew [Criminal Investigator, and Private Attorney General] “US v. USA.”. 1964.

**When they came together** the first time **to form** **a Union of several**(plural) **States**, **they decided**¶ **to call themselves the "United States of America.”** Note also that **those Articles clearly distinguished**¶ "**United States of America" from "United States** **in Congress assembled**. **The States formally delegated certain powers to the federal government**,¶ **which is clearly identified in those Articles as the "United States"**. Therefore, the "United States of America" nowrefer to the 50 States of the Union, and **the term "United States**" **refers to the federal government. The term "United States" is the term that is used consistently now** **throughout Title 28 to refer to the federal government domiciled**¶ **in D.C.** There is only ONE PLACE in all of Title 28 where the term "United States of America" is used, and there it is used in correct contradistinction to "United States":  **Because Title 28 contains statutes which govern all federal courts**, **the consistent use of "United States" to refer to the federal government carries enormous weight**. **Title 28 is the latest word on this subject, as revised, codified and enacted into positive law on June 25, 1948**. Moreover, the Supremacy Clause elevates¶ Title 28 to the status of supreme Law of the Land.

#### The United States refers to the 50 states and territories

**Dictionary.com defines United States:** Dictionary.com “United States.” RP.

**a republic in the N Western Hemisphere comprising 48 conterminous states, the District of Columbia, and Alaska** in North America, and Hawaii in the N Pacific. Conterminous United States, 3,022,387 sq. mi. (7,827,982 sq. km); with Alaska and Hawaii, 3,615,122 sq. mi. (9,363,166 sq. km).

### Public College

**USLegal:** USLegal [Site that defines legal terms] “Public College Law and Legal Definition.” *USLegal.* RP

**Public college means “any institution of higher education or any technical or vocational school above the secondary school level, provided that such public school or public college is operated by a State**, subdivision of a State, or governmental agency within a State, or operated wholly **or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source**.”(42 USCS § 2000c)

### Any

#### Any means every

**Merriam Webster:** “Definition of Any”, *Merriam-Webster*, accessed 2 Dec 2016, https://www.merriam- webster.com/dictionary/any.

1: one or some indiscriminately of whatever kind: a: one or another taken at random <ask any man you meet> b: **every —used to indicate one selected without restriction <any child would know that>**

### Restrict

#### A restriction is a policy that cuts back on something.

**Merriam Webster:** Merriam Webster [Dictionary] “Restriction.” RP

**something (as a law or rule) that limits <There are *restrictions* on building**. 2 :  an act of limiting :  the condition of being limited

#### A restriction on free speech can be either ideas or actual words.

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American Univiersity.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

Although I know of no source which collects the individual speech codes, it is possible to identify a range of prohibited expression from well-publicized cases. **As a general matter, a university has two options in restricting speech. First, it may suppress certain types of ideas. This was the case with the University of Michigan's "Policy on Discrimination and Discriminatory Harassment of Students in the University Environment" (policy) which was struck down in *Doe v. University of Michigan."* The other option is to tolerate ideas but limit the means of expression, for example, by banning racial epithets or derogatory comments in specific contexts. The latter is reflected by the University of Wisconsin's speech code (UW rule) which was overturned in *UMW Post v. Board of Regents.***

#### A restriction means a complete elimination

**Caiaccio:** Caiaccio, Kevin T “Are Noncompetition Covenants Among Law Partners Against Public Policy?” Georgia Law Review, Spring, 28 Ga. L. Rev. 807, Lexis). 1994. RP

**The Howard court began its analysis by examining the California Business and Professions Code,** which expressly permits reasonable restrictive covenants among business partners. 139 The court noted that this provision had long applied to doctors and accountants and concluded that the general language of the statute provided no indication of an exception for lawyers. 140 After reaching this conclusion, however, the court noted that, since it had the authority to promulgate a higher standard for lawyers, the statute alone did not necessarily control, 141 and the court therefore proceeded to examine the California Rules of Professional Conduct. 142 The court avoided the apparent conflict between the business statute and the ethics rule by undertaking a strained reading of the rule. **In essence, the court held that the word "restrict" referred only to outright prohibitions, and that a mere "economic consequence" does not equal a prohibition.** 143

### CPS

#### Here are the types of speech that are protected by the US Constitution

US Courts: United States Courts, About Federal Courts, What Does Free Speech Mean?, Date Accessed 12/4/16 <http://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does>

Not **to speak (specifically, the right not to salute the flag). West Virginia Board of Education v. Barnette, 319 U.S. 624 (1943). Of students to wear black armbands to school to protest a war** (“Students do not shed their constitutional rights at the schoolhouse gate.”). Tinker v. Des Moines, 393 U.S. 503 (1969). **To use certain offensive words and phrases to convey political messages. Cohen v. California, 403 U.S. 15 (1971). To contribute money (under certain circumstances) to political campaigns.** Buckley v. Valeo, 424 U.S. 1 (1976).  **To advertise commercial products and professional services (with some restrictions).** Virginia Board of Pharmacy v. Virginia Consumer Council, 425 U.S. 748 (1976); Bates v. State Bar of Arizona, 433 U.S. 350 (1977). **To engage in symbolic speech, (e.g., burning the flag in protest**). Texas v. Johnson, 491 U.S. 397 (1989); United States v. Eichman, 496 U.S. 310 (1990).

#### Here are the types of speech that are not protected by the First Amendment

US Courts: United States Courts, About Federal Courts, What Does Free Speech Mean?, Date Accessed 12/4/16 <http://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does>

**To incite actions that would harm others** (e.g., **“[S]hout[ing] ‘fire’ in a crowded theater.”). Schenck v. United States, 249 U.S. 47 (1919). To make or distribute obscene materials.** Roth v. United States, 354 U.S. 476 (1957). **To burn draft cards as an anti-war protest.** United States v. O’Brien, 391 U.S. 367 (1968). **To permit students to print articles in a school newspaper over the objections of the school administration.**Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988). **Of students to make an obscene speech at a school-sponsored event. Bethel School District #43 v. Fraser, 478 U.S. 675 (1986). Of students to advocate illegal drug use at a school-sponsored event. Morse v. Frederick, \_\_ U.S. \_\_ (2007).**

## TA

### Bennett TA

#### First Amendment applies on public campuses.

**FIRE:** State of the Law: Speech Codes,” *FIRE*, accessed 2 Dec 2016, https://www.thefire.org/in-court/state-of- the-law-speech-codes/.

**That the First Amendment applies on the public university campus is settled law**. Public universities have long occupied a special niche in the Supreme Court’s First Amendment jurisprudence. **Indeed, the Court has held that First Amendment protections on campus are necessary for the preservation of our democracy.**

#### The free speech debate is a question of empirics

**Baker:** C. Edwin Baker, “‘Hate Speech’ and Incitement to Violence” (Web, Columbia University School of Law, Spring 2009), 13.

**Given these alternative empirical possibilities, the debate is not between idealistic but uncaring ‘liberal’ defenders of free speech and fierce opponents of the worst forms of racism. Rather the pragmatic debate is about different empirical predictions concerning the most effective strategy for opposing racism. Empirical evidence of which scenario is most likely should be welcome**. Maybe the evidence exists, thought I do not know of it at a level where confidence on a particular conclusion is warranted.

## Aff

### Strossen – Feminist Critique

#### Institutions shouldn’t ban porn but women should condemn it on their own terms – censorship is always a worse form of violence

**Strossen:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Feminist Critique of the Feminist Critique of Pornography.” *New York Law School.* 1993. RP

**The speculative, attenuated benefits of censoring "pornography," in terms of reducing violence and discrimination against women, are far outweighed by the substantial, demonstrable costs of such a censorship regime in terms of women's rights. Throughout history, to the present day, censorial power has consistently been used to stifle women's sexuality, women's expression, and women's full and equal participation in our society.** This pattern characterizes even-indeed, especially-censorial power that is wielded for the alleged purpose of "protecting" women. As is true for all relatively disempowered groups, women have a special stake in preserving our system of free expression. **For those women who find certain "pornographic" imagery troubling, their most effective weapon is to raise their voices and say so**. Moreover, as illustrated by the tactics of various feminist anti-"pornography" groups, one essential component of their message is the very "porn graphic" imagery they decry. B**y effectively using such imagery not to promote women's "subordination," but rather, to rally public out- rage against misogynistic violence and discrimination, these activists illustrate why feminists should defend freedom of speech even for expression they find abhorrent. As Feminists Fighting Pornography, the Glad Day Bookstore, and even Andrea Dworkin herself recently have experienced, when the government suppressed their feminist, lesbian, and anti-"pornog- raphy" expressions, government power to censor "pornography" would predictably be unleashed against feminist messages and per- spectives. The power the government would assume in censoring "pornography" would pose a far greater threat to women's rights than the alleged power of "pornography" itself.** In the memorable words of journalist Ellen Willis, "**How long will it take oppressed groups to learn that if we give the state enough rope, it will end up around our neck.**

### Gener

#### Silencing discussion of theater is a performative act of violence, like authoritarian states that suppress theater and scrub actors out of public view.

**Gener:** Gener, Randy [Reporter and writer] “Fomenting a Denim Revolution.” *American Theatre.* May/June 2009. RP

This epithet (foisted first by the former U.S. Secretary of State Condoleezza Rice) is sadly true. **On the map of Europe, Lukashenko’s Belarus remains one of the last few places where free speech and assembly are considered criminal acts. Opposition activities and counterculture forces are frequently harassed and repressed.** There have also been instances of politically motivated killings, kidnappings and disappearances. **With a few exceptions, the names of relevant artists and cultural producers both at home and abroad have more or less been eliminated from the public discourse—in a figurative sense, they have disappeared.** Given this distorted state of affairs—which includes a policy of limited contact even with Europe’s other so-called pariah states—the small amount of information we *do* get to hear about Belarus is mostly dismal and negative. For Westerners, particularly bleeding-heart liberals and hardened free- speech activists, the cries for help are heartbreaking and alarming. “It is awful,” Nikolai Khalezin and his wife Natalia Koliada, co- founders of the renegade ensemble Belarus Free Theatre, wrote to Brooklyn-based writer and actor Aaron Landsman in the first of many e-mails seeking international support. “More than 500 people are arrested for the last five days in Minsk, 300 more in the regions. During the night, the camp was destroyed. People are arrested. They stayed in different jails along the walls, and nobody allowed them to go the toilet. We stayed there every night. Yesterday, when we were stayed for already eight hours and got absolutely freezed, we went home and in one hour I got a call that the camp is destroyed and all people are arrested. I cannot read news anymore because it is just awful.” Landsman received this e-missive, dated March 24, 2006, soon after several days of large-scale protests in downtown Minsk’s Oktyabrskaya Square (October Square) were quelled. On March 19, Lukashenko had been voted back to office in a landslide re-election widely criticized in the West as marred by fraud. Subsequently, almost 40,000 protesters gathered around the clock in the square and set up tents despite subzero temperatures at night. **Among the activists arrested at the square were the 60-year-old Belarusian theatre director Valeri Mazinski; Pavel Harlanchuk, an actor/ director of the National Academic Drama Theater (the national Russian theatre, named after Maxim Gorky); and Svetlana Sugako, a 19-year-old musician and assistant director, who was detained for attempting to bring warm clothes to her Free Theatre colleagues**. In the e-mail, Khalezin and Koliada continue: “But E.U. [European Union] and the States [U.S.] make just statement, but no real sanctions. I think, the sanctions will come into force only if we are killed right in the street. It is absolutely terrible. Two our assistants to director of the Free Theatre are arrested. People are severely beaten up. Your support really help us to continue our fight, but we are not sure for how long time we will have our strengths.” Let it be noted, for the sake of analyzing the deep paradoxes and strange peculiari- ties confronted on a daily basis by artists in Belarus, that Lukashenko has been elected into office three times—and that however harsh or repugnant his regime may be to his multiple opponents, he seems to enjoy an extraordinarily high level of support among ordinary Belarusians, who have mainly been concerned with their stability and economic well-being. Lukashenko’s brand of material- ist populism, shot through with patriarchal folksiness, has successfully defeated the recent attempt to incite a “colored revolution,” styled after the Velvet one in the Czech Republic in the late 1980s and bearing idealistic similarities to the recent revolutions in Georgia (Rose in 2003), the Ukraine (Orange in 2004) and the Central Asian republic of Kyrgyzstan (Tulip in 2005). The Belarusian opposition dyed its protest blue—a Denim Revolution. The label was coined after a militia officer, in September ’05, seized the forbidden national flag (a white-red-white banner) in a public demonstra- tion in the central square of Minsk. **As Khalezin memorializes the event in his solo play *Generation Jeans*—the only Belarus Free Theatre production that has so far been presented in the U.S., by the Under the Radar festival at the Public Theater in January ’08—a member of the youth resistance movement Zubr “took his jeans shirt off and fixed it to a stick. As soon as the jeans shirt rose over the crowd, it was already not a shirt but a flag: the flag of the jeans generation, the generation of free people.” Belarusian democratic opposition, Landsman became one of the first American artists to extend a helping hand to Free Theatre**. (In the same year of *Generation Jeans*’s New York arrival, Free Theatre participated in the Arts in One World gathering at California Institute of the Arts, thanks to the Trust for Mutual Understanding’s support. The hotINK international play reading festival, curated by New York University professor Catherine Coray, also presented Khalezin’s earlier effort *Here I Am*.) Landsman says he found “the broken English” in that above-quoted e-mail “really affect- ing, strangely,” explaining: “When I got the original e-mail from them, my heart went out to them in a way that I can’t rationally make sense of. It put everything in focus. I wanted to help these people.” “My thought,” Landsman wrote back to Khalezin and Koliada, “is that a reading of your work would raise awareness here about what you do and perhaps galvanize some of the New York theatre community to get off their asses and help their fellow artists in a country where things are obviously much more difficult than they are here.” **Soon Landsman was engineering an October ’06 reading of four new Belarusian dramas with the help of director Paul Wil- lis and artists from the LAByrinth Theater Company, Naked Angels and Tinderbox Theater, as part of the Culture Project’s Impact Festival in New York.** This interna- tional day of solidarity was presided over by the British playwright Tom Stoppard, who made a personal appearance. In addition to *Generation Jeans*, the scripts presented at Impact were *We.Belliwood*, a collage of short works and verbatim dia- logues based on real life by young Belarusian playwrights Pavel Priazhko, Konstantin Ste- shik and Pavel Vassilievich Rassolko, all of which elaborate on the theme of young people struggling for Belarusian self-identification; Koliada’s *They Saw Dreams*, about women whose husbands were forcibly disappeared; and Andrei Kureichik’s *The Sky*, about six friends who decide to win back a degree of personal freedom by opening a nightclub in Minsk, but whose efforts are stymied by the intimidation and blackmail of Belarusian offi- cials. A playwright, novelist and screenwriter, Kureichik is not a Free Theatre member, but he was the first Belarus dramatist to break through internationally after the fall of Com- munism. At the time, though, his *Sky* was pub- lished in Poland under the pseudonym “Nikita Mitskevich.” Today Kureichik is considered a leading literary figure, with a commission from the state’s Russian theatre. **By contrast, the Belarusian ministries of culture and education dole out no support to Free Theatre**. The reason? Except for a website (*www.dramaturg.org*), this company does not exist in the official records. Inside Belarus, it exists in its own black hole. (Other Belarusian artists and cultural figures in the same boat include the documentary filmmaker Yuri Khaschevatsky [“Ploschcha”], oral- history author Svetlana Aleksievich [*Voices of Chernobyl*], the music groups Krama and Nejra Dziubel, the painter Alexander Rodzin and the singer Lyavon Volski.) In fact, Free Theatre, founded in March ’05, was barely a year old when it became a cause célèbre. Since its first touring gig at Alvis Hermanis’s New Riga Theatre in Latvia, the troupe has per- formed in more than 15 countries, including Sweden, the Netherlands, Finland, Belgium, France, Poland, Russia, Lithuania, Australia, the U.K. and the U.S. **Although Free Theatre runs the real risk of crackdowns and jail at home**, it is the dar- ling of prominent and respected playwrights such as Stoppard, the former president of the Czech Republic Václav Havel, Arthur Kopit (whose *Oh Dad, Poor Dad, Mama’s Hung You in the Closet and I’m Feelin’ So Sad* is considered a landmark work there) and Mark Ravenhill. Later Harold Pinter and Rolling Stones singer Mick Jagger became Free Theatre trustees and patrons. Pinter, in particular, was so enamored of Free Theatre’s ferocious adaptation of his work, called *Being Harold Pinter*, that he gave the company permission to perform his plays anywhere in the world without paying royal- ties. “We met Pinter,” remembers Khalezin, soon after the Nobel Prize–winning dramatist died this past December. “He told us that Britain was a dictatorship, too. We listened in respectful silence, and then we told him about our situation. He had to agree we had a far worse dictatorship.” Critics and international groups have followed suit—but not always to celebrate only Belarus Free Theatre’s artistry. In April ’07, the European Theatre Convention waived its dues and invited the company to become a full member. The double irony of this largesse: No other Belarusian company is a member of this network of 40 European theatres and Belarus is not a European Union member state. This group met with Havel at his country cottage in the Czech Republic, special police forces burst into the private apartment in Minsk where Free Theatre was holding its pre- miere of a clandestine production of Edward Bond’s *Eleven Vests*. Everyone, including the actors, director and audience members (among whom were theatre professionals from France and the Netherlands)—about 50 people—was hauled to a police station. All were released three hours later. “**One had hoped that the days when artists were arrested for free expression were buried with totalitarian states, but Belarus is as close to a totalitarian state as you can get in Europe,”** Stoppard told the *Guardian* newspaper, accus- ing the authorities of a “grotesque” attack on human rights. Such advocacy has galvanized Euro- pean bodies into action. In December ’07, the French republic awarded Free Theatre its Human Rights Prize—the first time this particular honor has gone to a cultural orga- nization. In April ’08, at the instigation of Stoppard, Havel and Pinter, the European Union recognized the Belarus troupe with a special mention during the 12th annual Europe Theatre Prize in Greece for the ensemble’s “opposition against the oppression of the Belarusian government.” In November ’08, Free Theatre was recognized at ArtAc- tion’s inaugural Orient Global Freedom to Create event “for standing up to censorship and repression.” Free Theatre’s general manager Natalia Koliada can’t help but note the disparity in the significance of these accolades: “It’s very sad that the Europe Theatre Prize’s special mention was given not for artistic choice. It was given for our position against the Belarusian regime. It was very difficult because we have received great reviews in all the places where we go.” The human-rights prize, signed by French president Nicolas Sarkozy, on the other hand, “was an honor for us,” she continues. “In this case, the prize was for our artistic work—they totally supported our aesthetic choices.” Nevertheless, Koliada remarks, “The most vitally important point for us is that Belarus is now on the artistic agenda of European theatre. We’ve made it so that the name of this country and the situation of our country are given voice at the highest level of European theatre.” The conundrum that Koliada notes in our conversation—the tension between the necessity to express political opposition to a dictatorship and the precarious role theatre plays to mirror the contemporary realities of a people—cuts to the very heart of the dissident’s dilemma. For Landsman, Free Theatre’s existence raised questions about “how much can one accomplish with art alone, about assumptions one makes when working at a remove from one’s colleagues, about the ways aesthetics are affected by political strictures and freedoms.” Having seen Free Theatre’s productions of *Generation Jeans*, *Zone of Silence* and *Being Harold Pinter* on the international circuits, I was motivated to ask the same question in different form: In a post- Soviet space, what is the difference between creating new theatre for the sake of innovation versus creating new theatre for the sake of survival under extreme conditions? You can’t snap a photo of President Lukashenko’s residence in central Minsk. Photography is not banned—but taking a photograph of this cube structure, built in the Stalinist Empire style, is simply forbid- den, no questions asked. When I approach Lukashenko’s residence with my camera, the guards who patrol all four sides of the building shoo me away. I try to get a shot of the residence from behind a metal fence in the leafy public park across the street, but a KGB officer spots me, his face evincing such fury, his fist taking empty stabs in the air, that my young Belarusian interpreter freaks out and advises me to briskly walk away. This grandiose building, surrounded by clean boulevards and shaded by the trees of a modest park, is supposed to be the most closely guarded place in the country, since all the roads leading to the area are sealed off to vehicular traffic. The nearby October Square bears no physical traces that a Denim Revolu- tion was snuffed out here or that it sometimes morphs into a vast stage for organized protests and flash mobs. “Watch out for taking too many pictures of official-looking buildings” was the warning Landsman got when he traveled to Minsk in March ’08 to attend workshops for his own writing contribution to Free Theatre’s most recent international project, the three-hour *Eurepica.Challenge*, in which 14 playwrights from 14 countries wrote mini-plays about the challenges their countries are facing today. Koliada adds that according to the new rules, it is now forbidden to take a photo of the Minsk airport. Unlike the White House, which is sepa- rated from the hoi polloi by a gated park and an immense garden, Lukashenko’s residence sits right on the curb. It was so close that I entertained the notion of making a house call—until I realized that this proximity and pristine façade are designed to maintain the illusion of order and well-being. “The larger-than-life monuments cast shadows of secrecy over the territories of terror and the operations of power,” states the writer Svetlana Boym in *Common Places: Mythologies of Everyday Life in Russia*. At night, the lights soften the unearthly- looking building considerably. Night is also when the activities of young people and counterculture artists spring to eager life. Rock bands, for example, flirt with being both above-board and clandestine. If the musicians play too many government-sanctioned gigs, Landsman says, young people would view them as morally bankrupt and refuse to buy their records. But if they play too many underground gigs, the government cracks down. Persons who discreetly slide between the two cultures could easily be denounced as collaborators or infiltrators by either side. Such polarization wreaks havoc on the artistic development of Belarus Free Theatre. The company’s brave stand against the Lukashenko regime—based on the inher- ent belief that theatre can foment a Denim Revolution on the world stage—makes their cultural productions elite phenomena inside Minsk. With no place to rehearse, no per- manent facilities to perform its shows, no administrative offices to call its own—indeed, no means of a earning a ruble locally—Free Theatre has no choice but to perform in private apartments, and even then those locations frequently change because of the risk of exposure and persecution. “If we sell one ticket,” Koliada says, “we would be sent to jail for two to six years.” **Except for one, all the Free Theatre actors have been sacked from their jobs at state-run theatres**. This past November, Koliada’s father, Andrei, was dismissed from his position teaching acting at the Belaru- sian Arts Academy. Vladimir Scherban, who stages all Free Theatre shows, was fired from his position at the Yanka Kupala National Academic Drama Theatre—not only is he forbidden to direct at any state theatre in Belarus, but all of the productions he worked on before joining Free Theatre have been cancelled. “Belarus is completely isolated from the rest of the world,” Scherban adds. “**Promoting our productions and inserting them into the European context is both neces- sary and indispensable**. Our tours abroad are a means of overcoming the censorship that we are victims of at home.” The few times Free Theatre has per- formed in clubs and street cafes, the owners of those establishments lost their business licenses. In the summer, this dynamic 18-member company (10 actors, 1 profes- sional dramatist, 1 director, 4 managers and 2 technical assistants) performs in the woods. On the same October night that I was wast- ing time stealing photos of Lukashenko’s residence, I was waiting for a return call from Free Theatre’s stage manager—she was supposed to tell me where to meet a theatre representative, who would then direct me to the actual performance. Since signage in Minsk is in Cyrillic, it is a virtual necessity to know Russian or be accompanied by someone who does. Since I had no choice but to retrieve my passport from my hotel (in case of an arrest, it could be the difference between being held in a police cell for a few hours to a few days), I unfortunately missed that evening’s performance. “It was good you didn’t make it,” Koliada says. “Five policemen with guns came to the performance. Thank God, Nikolai and Vladimir somehow man- aged to solve it. The performance was stopped for 40 minutes.” The performances Landsman saw in Minsk constitute the very essence of poor theatre. “We walked through a whole ton of muddy streets,” he remembers. “We went into a backyard and into the back door. Someone lent them the house. There were 15 or 20 people outside smoking. There were cookies and coffee in a makeshift kitchen. The troupe used two main rooms, probably both 15 feet by 18 feet. An arched wall had been knocked out between them. The audience is on one side. Styrofoam white blocks were placed on three windows. The actors performed with one bare light bulb overhead and a small black curtain on the door.” Lately, Free Theatre members have taken to rehearsing more and more abroad, usually in other Eastern European countries. For a good part of the year, the troupe goes out on tour. Particularly now that that it has received an array of international accolades, it would be a rare occurrence to see Belarus’s most experimental ensemble on its own turf. Khalezin and Koliada, Free Theatre exposes the ugly side of life in Belarus under Lukash- enko. *Discover Love*, for example, interweaves the real-life story of Irina Krasovskaya, whose husband Anatoly was kidnapped and mur- dered, with similar stories of political prison- ers and forced disappearances from Asia and South America. In the beginning, Khalezin’s efforts (*Here I Am* and *Thanksgiving Day*) dealt with existen- tial questions concerning family relationships, domestic life and immigrant struggles. But as Free Theatre’s political struggles become more desperate, its stripped-down, rough- hewn, sometimes dated, in-your-face aesthetic has assumed more journalistic motives and autobiographical plots. The three-part *Zone of Silence*, dubbed “a modern Belarusian epic,” was torturous to sit through, if you’re used to the accessible forms of Western drama- turgy, but it was riveting and insightful as an earnest attempt at documentary-theatre self-exposure. In the confessional first part (*Childhood Legends*), four actors air the pain and trauma of their own childhood losses: a suicide attempt due to an unfulfilled romance, the humiliations of kindergarten, the scars of twice witnessing the imprisonment of a father. *Diverse*, the video-infused second part, reveals the daily costs of existing in the shadow-life of Belarus: a black Belarusian gay man who is frequently harassed, an eccentric old woman for whom Stalin and Lenin remain romantic heroes, a homeless man with a passion for vulgar dancing in a city that prides itself of its spotless streets and hobo-free parks. *Num- bers*, the almost wordless concluding section, examines statistical facts about Belarus (How many are unemployed? How many newborn babies are left in maternity homes?) with stun- ning physicalization; this meditation on the naked persistence of Belarusian bodies lifts the lethal sincerity of *Zone of Silence* into the realms of stage poetry. Free Theatre is fortunate to have Vladi- mir Scherban at its disposal. He is a breathtak- ingly good director who knows that simply broadcasting taboo subjects is not enough counteract the official ideological mythol- ogy, as personified in the figure of a dictator. Nowhere is his originality more evident than in his prismatic *Being Harold Pinter*, which he skillfully assembled from excerpts of six Pinter plays, using Pinter’s Nobel Prize speech as a spine and concluding with touching letters from Belarusian political prisoners. This 90-minute masterpiece of montage runs roughshod over those famous Pinter pauses yet mines the oblique, more intimate dramas for their global resonance and overt violence. Fierce and relentless, the Belarusian actors push the later, more political Pinter works to expressionistic intensity: A woman brandishes a flaming torch over a male victim’s naked body in *One for the Road*. An actor transforms himself into a vicious guard dog in *Mountain Language*. At one point, the entire company is trapped inside a plastic sheet as if gasping to breathe the air of freedom. In other words, Free Theatre took risks by turning Pinter’s plays into a mirror of their underground life in Belarus. “When you have children at home,” says Koliada (who has two of her own, ages 10 and 15), “and suddenly the doorbell rings and your daughter opens the door, and she sees the police there and she asks, ‘Did you come to arrest my mum?’, the situation becomes very complicated and painful.” Ironically, Free Theatre’s righteous mis- sion to be a potent voice of artistic dissent limits and marginalizes its very real ability to reach out to the Belarusian citizens who are the source of their creativity, even as its producers claim to have several thousands on its audience waiting list for every per- formance. Says Koliada: “What Free Theatre does, first of all, is create. **This has never been done before: a Belarusian theatre talking about Belarusian issues and written by Belarusian authors and performed by Belarusian artists.** We are creating a new way of art in Belarus. We don’t want people to think about Belarus only in political terms. We want people to *know* that there are contemporary artists in Belarus. This is a time of national revival.” In waging a subversive campaign through drama in the shadows of the official culture, Free Theatre suffers from and struggles with the impossibility of separating their artistic choices from their own political troubles. **Because everything that is different is criminalized,** true Belarusian renewal can take place only if the current regime is removed from power (an unlikely prospect). “At the press conference after our read- ing,” Landsman recalls, “a reporter asked me if there was anything one could do on stage in New York that would get you arrested. I said I didn’t think so—that after the Patriot Act was passed, a few artists produced shows they claimed would lead to their arrest, but as far as I know no playwright, actor or audience members were incarcerated. I mentioned a friend’s joke that if a dictator really wanted to neutralize the subversive effects of experi- mental theatre in Belarus, he should do what we do in the States: Ignore it.” To which Khalezin instantly said, “I think that is called democracy.” “The speed with which he came up with that remark”—suggesting that Free Theatre would love to be ignored like that—“illustrates one of the more profound moments I encoun- tered in Belarus,” Landsman avowed. To which I add that at this historical moment, questions about Free Theatre’s aesthetic merits—even if they are not irrelevant—are beside the point. What matters is that in Belarus it exists at all

### Billington

#### Discussion of censorship in theater is uniquely valuable – a culture of censorship has taken hold worldwide.

**Billington:** Billington, Michael [Contributor, The Guardian] “C is for censorship.” The Guardian. December 2011. RP

**For any British person under the age of 50, the idea of theatrical censorship is totally alien. It's something we associate, if we think about it all, with past authoritarian regimes: with the Soviet Union and its satellites, with South Africa under apartheid, with Spain under Franco**. But it's salutary to be reminded that, in Britain, it was only the Theatres Act of 1968 that finally put paid to a system of censorship that existed here for over 230 years. While we rejoice in our current freedom, we should be wary of a creeping caution that exists in the UK and other western democracies. **The old system of stage censorship, by which in Britain plays had to be licensed by a minor official of the royal household, was absurd, arbitrary and anachronistic. It stifled serious discussion of politics, religion and sex.** It led to sporadic bans on major dramatists such as Ibsen, Strindberg and Shaw. It also prompted the Lord Chamberlain and his team of play readers to believe that they were aesthetic as well as moral arbiters. The initial report on Edward Bond's Saved, submitted by the Royal Court for a license in 1965, described it as "a revolting amateur play by one of those dramatists who write as it comes to them out of a heightened image of their own experience." It was, in fact, the prosecution of the Royal Court, over its adoption of the polite fiction that an unlicensed play could be presented as a "club" performance for members only, that did as much as anything to expose the arrogant nonsense of stage censorship and hasten its demise. **And yet do we enjoy total freedom today? In the 1980s, when I was a member of the Cork Enquiry into theatre, I remember an eminent director saying "Sponsorship is implicit censorship"; and the more we move, as the current government wishes, from public to private funding on the American model, the greater the risk of external intervention. Organised protest has also helped to stifle theatrical debate. In December 2004 Gurpreet Kaur Bhatti's Behzti, which contained scenes of rape, abuse and murder inside a Sikh temple, caused massive demonstrations outside the Birmingham Rep and, in the interests of public safety, was quickly withdrawn.** Since then it has been produced in France and Belgium but, aside from an unpublicised reading at the Soho theatre in 2010, has not been seen in Britain. As Robert Sharp of the English branch of PEN wrote after that one-off reading, "Behzti's continued censorship is a boil that must be lanced." **Elsewhere the technique of violent protest has caught on: it happened just last month, in Paris, where an allegedly blasphemous play called Golgota Picnic prompted mass demos from outraged Catholics. What worries me is that the threat of public disturbance produces self- censorship on the part of writers and induces caution in producers.** In theory, no subject is off- limits to British dramatists. But religion still remains a taboo area. And, given the protests that greeted Richard Bean's mild critique of Muslim extremists a few years ago in England People Very Nice, one wonders whether anyone would dare to write or stage a play that subjected Islam, or any other non-Christian religion, to fierce scrutiny. **Theatrical censorship in Britain may be dead, but total freedom of expression has yet to be achieved.**

### Pullan

#### Privatization leads to forms of segregation that makes dialogue about racial issues impossible – people run away and hide instead of engaging, retreating to their own private zones

**Pullan:** Pullan, Wendy [Contributor, Saferworld] “Just cities: the role of public space and everyday life.” January 2016. RP

**Recent years have seen private citizens flocking to their city centres in order to protest against abuses and violence, to call for more or better forms of justice and democracy, to make their rights and wishes apparent.** Tahrir Square, Gezi Park, Place de Republique have become synonymous with public demonstrations in Cairo, Istanbul and Paris. **Much has been written about the importance of mobile phones and social networking in forming these events, yet along with effective means of communication, occupying urban space was equally necessary and significant. Without dwelling upon the success or failure of such movements, ‘being in the place’ was a way of establishing civic participation**. To better understand the wider background of such events, I would like to make two observations: first of all, conflicts across the world are becoming increasingly pervasive and complex. In the words of the International Crisis Group’s Jean-Marie Guéhenno, they are more ‘fragmented’. **Rarely are today’s conflicts declared wars with clear beginnings and ends; increasingly, they take the form of prolonged strife with intermittent periods of violence and of relative peace. Many are deeply embedded in ethno-national and religious hostilities as well as economic inequality and class tensions**. Secondly, such conflicts are increasingly played out in urban settings; a 2011 World Bank Report notes that ‘in many cases, the scale of urban violence can eclipse that of open warfare’. Today, cities have become the arena for conflict. The conflicts may originate in national or transnational disputes, but they are played out in cities like Belfast, Baghdad and Jerusalem. Such cities may be targeted as in the siege of Sarajevo during the Yugoslavian civil war or the state-sponsored barrel bombs attacking Syrian cities. But conflicts may also be generated from within by hostile sectors of the population. Whether generated by outside or inside forces, or both, these conflicts increasingly represent cracks in the continuity of urban society. In considering ethno-national and religious conflicts, we find a high level of longevity and uncertainty that is proving resistant to traditional peace processes and political negotiations. Solutions are elusive and we may simply have to learn how to live with certain levels of conflict. Such a realisation affects the place of justice and the role of legal solutions. The dispensing of justice only through policy and official channels may be insufficient, biased or ineffective. One reason for this is because conflicts in cities often concern everyday institutions and practices, played out in ordinary urban life. Examples of everyday life affected by conflict are varied and pervasive: no-go streets in the city; neighbourhood domination by local strong men; regular and sometimes violent demonstrations and parades; streetscapes of graffiti, slogans and other ethnic identifiers; or, more subtle practices that dictate where one chooses to live, work or shop. In the divided cities of the Middle East, urban quarters are increasingly associated with particular ethnic or religious groups; in parts of Belfast, Republicans and Nationalists can be identified by the side of the street on which they walk. Often personal choice is absent; exclusion is pre-determined by religio-political identity and security. The ancient idea of nomos, understood as law and legal order, also has a second and related meaning of convention or custom. Justice, or lack of it, can be played out through customary practice in daily activities. It has to do with how we manage our daily interactions and the urban scenarios that determine where human exchange exists and where not. This is usually a delicate balance. Philosopher Peter Sloterdijk has noted that ‘more communication means above all more conflict’. Understanding each other needs to be supplemented by tactics, actually a ‘code of discretion’, of ‘getting out of each other’s way’. If it were one defined code, legislation would be useful. However, throughout everyday life in urban situations, many codes of behaviour play a role and skills and discretion are necessary to navigate throughout such a complex territory. Protocols shift and respond to a myriad of different powerful forces. Whilst this may be fine when there is good will, it is easy to see how such a delicate series of balances and reactions break down in times of trouble or conflict. Explicit legislation will have an effect at only a very superficial level, but most transactions are rooted in fundamental yet complex forms of praxis, effectively, as architect Peter Carl puts it, ‘in what people do’. Much of this has to do with human activity and the interaction between people, or their ability to ignore each other. **But it is worth noting that the environment also plays a major role in forming a place for these events. In other words, praxis must be located, and customs develop in physical contexts. In cities, public space, as the physical space that diverse peoples share in some way, provides critical environments**. Cities have been built on the fault lines of culture – places of trade and exchange, the coming together of religious individuals and groups, sites to make proclamations, utter judgements, build major structures – and these are inherently the places of diversity and difference. A city is only a city when it encompasses diversity, yet, returning to Sloterdijk’s statement, this, on a grand scale, is a recipe for conflict. **Thus urban public space is inherently diverse, often conflictual and sometimes contested. Many of our most important urban institutions are based upon adversarial relations – parliaments, judicial courts, debating chambers. Debate and disagreement have also traditionally taken place in other less formal bodies: markets, cafes, theatres, demonstrations and protests. In all of these, no absolute agreement is normally expected**. Rather they act as a means of moving forward, with difference and even conflict, as part of the culture, becoming embedded in everyday life. These institutions are physically situated in cities and, effectively, adversarial relations become integral parts of the urban topography. **However, when heavy conflict arises, we see changes in cities, particularly in public space. People tend to shrink back into their own neighbourhoods and communities where they do not have to contend with the ‘other’**. If violence develops, mixed populations become afraid of each other, and everyday life, with all of its ordinary customs and protocols, becomes truncated. Above all, public space becomes a casualty. Public places and facilities – like markets and malls, bus stops and train stations, busy streets and squares – may become magnets for violence and thus closed down and hidden away from public use. In some ways this is not surprising: if violence emerges with threats to safety and human life, you get rid of the places where this is happening**. Yet, I should like to suggest, that whilst this might be effective in the short term, in the medium to long term, public space and the renewal of everyday activities that take place there is key to viable urban relations and the life of a diverse city. We need our urban public space. There are a number of problems with closing down public space and severe disruptions of customary life and practice. Restrictive measures in an emergency often linger on to focus on certain racial or ethnic groups**. So-called temporary measures, like building inner city walls and barricades – prominent features in Jerusalem, Nicosia, Baghdad – have the nasty habit of becoming permanent. In the long term, in very seriously divided cities like Mostar, Beirut or Jerusalem, the possibility of seeing a face that doesn’t look like yours, or hearing a language that is local to the place but you do not understand, becomes increasingly rare and, I would argue, increasingly precious. In examining the effects of conflict in public places, the Centre for Urban Conflicts Research has found two seemingly contradictory phenomena. **In periods of intense violence people from different ethnicities avoid each other but when times are more peaceful, at least some of the populations gravitate back toward mixed areas**. At the same time, entrenched conflicts result in long term or permanent urban changes, often embedded in the physical divisions. So in Nicosia, divided by an uninhabited buffer zone running through the city centre since 1974, it is difficult and may be impossible to rejuvenate this formerly public and shared part of the city. People’s customary practices have been disrupted by what I would call ‘conflict infrastructures’, most visibly in walls and imposed barriers. A tipping point is passed and what has been relatively easy to fracture is almost impossible to knit back together. **Along with such public spaces the customary practices of urban life and the civic rights associated with them also disappear**. Thus we see that cities are both robust and delicate at the same time. If we wish to address the problem of conflict in cities, we must recognise and play to the strengths of both these qualities. **Getting rid of public space, even in times of violence, is clearly not the answer.**

### Balkin

#### Free speech is key to a democratic culture

**Balkin:** Balkin, Jack M. [Knight Professor of Constitutional Law and the First Amendment, Yale Law School] “CULTURAL DEMOCRACY AND THE FIRST AMENDMENT.” *Northwestern University Law Review.* Volume 110. 2016. RP

A theory of democratic culture, in short, concerns freedom to engage in cultural production as much as democratic self-government. **Although I have called my approach a theory of democratic culture, the term “democratic” refers not to representative government but to cultural participation—the freedom and the ability of individuals to participate in culture**, and especially a digital culture. **It follows, then, that a theory of democratic culture straddles the traditional division between liberty-based and democracy-based theories of freedom of expression**. Nothing in this approach discounts or denies the importance of political self-government as a ground for freedom of expression, or the First Amendment’s role in democratic legitimation. But the theory is concerned with more than this; it does not limit speech’s constitutional value to legitimating the government of particular nation- states. Like democracy theorists, I believe that freedom of speech concerns power—how to regulate it and hold it accountable. But my conception of power is more expansive than theirs. The term “democracy” comes from two Greek words, “demos” meaning people; and “kratos” meaning power.25 In its most literal sense, democracy means power to the people. The central question of democracy is how people can have power in their own lives and over their own lives. A responsive state accountable to the public is one way to achieve this end, but it is not the only way. There are other forms of power that exist beneath, above, and outside the state. One can also organize or critique private institutions—religions, workplaces, firms, and families—in terms of democratic principles, although the way that democracy operates in each case may differ depending on the nature of the practice. In particular, culture and public opinion—often embedded in influential private institutions—are among the most important forms of power. They influence everyone on Earth, no matter what nation-state they belong to. By participating in culture, we mutually influence each other and shape each other through the circulation of beliefs and opinions and works of art. **The state draws attention to its power over individuals in countless ways, but the power of culture is so great that it may not even be noticeable when it is most effective. One reason to protect freedom of expression is to make the power of the state accountable to the people who live within it. But another reason is to give people a say over the development of the forms of cultural power that both undergird and transcend the state. In a free society, even in one that is not perfectly democratic in its politics—or even democratic at all— people should have the right to participate in the forms of meaning-making that shape who they are and that help constitute them as individuals. This activity of meaning-making through cultural participation, artistic expression, and comment, as well as the phenomenon of mutual influence through the circulation of opinions, long predated the rise of modern democracies**. And it continues even in countries that are still not democratic. Moreover, in the digital age, cultural participation is not confined to national boundaries and it does not respect national boundaries. Although cultural participation may be necessary to legitimate power within nation-states, it has importance and value that goes well beyond this task. **Freedom of speech rests on multiple constitutional values, not a single value. Freedom of speech supports democratic self-government—in more than one way, as we will see in a moment. But freedom of speech also protects the freedom to participate in culture. And by protecting the right to participate in culture, freedom of speech also promotes the growth and spread of mores, opinions, values, art, and knowledge. Liberty-oriented theories of freedom of speech tend to emphasize individual self-expression, maintaining that speech is crucial to individual autonomy**.28 By contrast, I want to emphasize the potent effects of mutual influence on individuals and the importance of cultural power over individuals. The individual’s autonomy over his or her conscience, belief, and expression is the flip side of the individual’s heteronomy with respect to cultural power.30 The individual as individual is both the product of multiple cultures and a contributor to these cultures. What we call autonomy, or thinking for one’s self, is an unpredictable mixture of reaction to, assimilation of, and reconceptualization of the cultural forces and meanings that surround us and constitute us. Cultures of belief and opinion—for they are always plural and variegated—have the most serious and pervasive power over us. People influence and reshape each other over time by living and participating in cultures of belief and opinion, and by operating within networks of cultural power and organized knowledge. **Moreover, cultures feature powerful institutions and practices—like families, educational organizations, science, and religion—that produce, alter, and reproduce beliefs and opinions. People come to know themselves through their assimilation, alteration, and rejection of the cultures they inhabit and that inevitably inhabit them. Freedom of speech is about power—cultural power. People have a right to participate in the forms of cultural power that reshape and alter them, because what is literally at stake is their own selves.**

#### Free speech legitimates the state [A2 Hobbes NC]

**Balkin:** Balkin, Jack M. [Knight Professor of Constitutional Law and the First Amendment, Yale Law School] “CULTURAL DEMOCRACY AND THE FIRST AMENDMENT.” *Northwestern University Law Review.* Volume 110. 2016. RP

**In just the same way, there are three ways that First Amendment freedoms legitimate state power. First, freedom of speech informs the public and produces better state decisionmaking in the long run. This is Meiklejohn’s explanation. Second, freedom of speech allows people to feel that the government is responsive to them and is not alien from them. This is Post’s explanation. Third, freedom of speech shows appropriate concern and respect for people living under the state’s rule. Respecting people’s ability to participate in culture and to express their values, emotions, opinions and ideas, even if these do not concern politics or public issues, respects people’s freedom to think and discuss what matters to them.**

#### Even commercial speech should be heard – restrictions on *anything* are an act of privatization

**Balkin:** Balkin, Jack M. [Knight Professor of Constitutional Law and the First Amendment, Yale Law School] “CULTURAL DEMOCRACY AND THE FIRST AMENDMENT.” *Northwestern University Law Review.* Volume 110. 2016. RP

My argument, however, has been that public discourse serves a constitutional value of freedom of cultural participation beyond merely legitimating the democratic exercise of political power. Suppose that I am correct and that public discourse serves two constitutional values, rather than just one. How does this affect Post’s arguments about commercial speech? **Once we look at public discourse from a cultural perspective, several of Post’s explanations for why commercial speech is not part of public discourse become less compelling. First, there is no clear distinction between people “seeking to advance their commercial interests” and “participating in the public life of the nation.**”76 **Many people try to make money by contributing to public discourse; conversely, many advertisers seek to shape the cultural life of the nation through advancing their commercial interests and selling products. The most famous advertising campaigns are also contributions to the tropes of public culture, and businesspeople like Henry Ford and Steve Jobs famously sought to change culture both through selling their goods and through shaping what those products meant to the general public**. Second, Post argues that commercial advertisers do not “invit[e] reciprocal dialogue or discussion.”77 **But selling goods and services is dialogic, not monologic. The best salespeople have always understood that they must make a connection to their customers, and that connection comes from a cycle of listening and responding to consumer values and interests, and reshaping the salesperson’s message accordingly. The successful salesperson’s message is designed to explain how the good or service will improve a person’s life, often less in terms of efficiency and efficacy than in terms of symbolic values or social meanings.** It is true that salespeople do not enter into a dialogue with their customers willing to be convinced that their product is not right for the consumer, but sometimes this actually happens, and good salespeople often learn from these encounters. Moreover, a speaker’s lack of interest in dialogue generally does not remove expression from public discourse; outside of advertising, many people engage in public discourse without any interest in changing their minds through the give and take of dialogue. The digital age has made the dialogic nature of salesmanship even more salient. Company websites and the websites of places where goods are advertised and sold—like Amazon.com and Walmart.com—invite end- user comments. Companies attempt to measure consumer response to their products, and consumers are not shy about complaining and suggesting improvements. Post’s third argument is that the social meaning of commercial advertisements is not an attempt “to make the state responsive to” the advertiser, but an “attempt[] to sell products.”78 Many, if not most contributions to public discourse, however, cannot reasonably be understood as an attempt to make the state responsive to us. When we engage in art or gossip, when we exchange the latest tricks for engaging in our favorite hobbies, or when we decry the lack of piety, idealism, ethics, or positive attitudes in the public, or in the world at large, we are not necessarily best understood as trying to make the state responsive to us. We may even regard the state as irrelevant to our concerns. But we could well be understood as trying to affect the culture of the world around us, and in that sense we are engaged in public discourse. Moreover, what about the commercial advertiser? **Isn’t the advertiser also trying to reshape the culture to make a better world for selling its products?** So shouldn’t the social meaning of its expression be indistinguishable from the work of the artist or preacher? All three, one might argue, are trying to affect culture by participating in culture. These and other difficulties emerge when we consider commercial speech in light of the definitions of public discourse I’ve offered in this Article. First, I said that public discourse is comprised of those processes of communication that must remain open to the public to ensure cultural democracy—the ability to participate in the forms of meaning-making and mutual influence that constitute us as individuals. Later, I added that public discourse refers to those processes of communication that allow public opinion to serve as the judge of society. **It should be clear enough that commercial speech is a form of meaning-making and influence that attempts to reconstitute individuals as consumers. It hopes to make people into the kind of people who will buy products, and it hopes to remake their desires into commercial desires. It should be equally clear that commercial speech seeks to judge social life. It hopes to persuade people that their values can be judged by their purchases and possessions. From the standpoint of cultural power and cultural influence, commercial speech is clearly an important part of contemporary culture. It is one of the most powerful forms of culture circulating in our world—as powerful, in its own way, as religion in shaping how people understand themselves and their actions.**

### Ho

#### Censorship is justified as a cultural action on campus – free speech is key to change this culture and minds.

**Ho:** Ho, Katherine [Contributor, Harvard Political Review] “Defending a Culture of Free Speech.” Harvard Political Review. April 2017. RP

There is a conflict between the desire for respectful speech and free speech, and nowhere is it more clearly manifested than on college campuses. **At the University of Missouri last November, student protesters physically tried to eject a student journalist from a protest area. Following the incident, Nicholas Kristof of the New York Times wrote, “Moral voices can also become sanctimonious bullies.”** One month earlier, the Wesleyan student government voted to cut funding for the school newspaper after it ran an op-ed criticizing Black Lives Matter. There are countless incidents in which speakers have been protested and cancelled on the basis of their ideas. But do these incidents accurately reflect the views of a majority of college students? Is it fair to describe student activism as wholly intolerant? I remain unconvinced. It seems more likely that the anti-speech actions of an extremely small minority are magnified by the media frenzy surrounding each incident, creating the misconception that these views are more common than they actually are. **When a speaker gets cancelled or a newspaper loses funding, the short-term impact is the censoring of that particular viewpoint. But the long-term (and more significant) impact is the signal sent about what type of speech is acceptable. Free speech—in its most crucial and effective form—is not simply a constitutional right under the First Amendment, but a fragile culture. It means that people should feel that they can go out and argue whatever they want. Without it, even the strongest legal and institutional protections are meaningless. Culture is invaluable in determining what people feel they can and can’t do; seeing other people openly discussing controversial ideas makes people much more likely to do so themselves. Conversely, seeing others punished for airing their opinions makes people scared and reluctant to speak out. The result is self-censorship. There is the fear that one small misstep will result in being on the receiving end of the “safe space” shaming bludgeon that is so prominently broadcasted nationwide**. People struggle to abide by the new norm of emotional respect in an intellectual space, shying away from potentially controversial speech that might challenge cultural orthodoxies. In certain corners of thought, ideological vibrancy is eroded and replaced by a respectful staleness. Richard Wang ’20 commented, “**You always run the risk. You don’t want to offend anyone, so you self-censor yourself... There’s a small group of people that is loud about being anti-free speech, which has a big role in determining the on-campus culture but isn’t representative of the opinions of the student body.” Surely, the Harvard administration can play an active role in fostering this delicate and essential culture of free speech. While official institutional policies can occasionally be used directly to protect speech, their real effect is as an indirect indicator to students of what the on-campus culture should be like**. A bottom-up effort by students to avoid self-censorship should be attempted, but it is erroneous to put the onus on individuals to take the stance against anti-speech backlash. The words and actions of the administration are crucial in determining what type of culture develops on campus. **We need a “top-down” approach by the administration to correct the root of the issue, which is the idea that we should strive to attain emotional comfort in an intellectual setting. This was the purpose of the recent University of Chicago letter on safe spaces and free speech— a clear reaffirmation of the value of free speech over emotional respect. The anti-speech actions of a small but vocal minority have been broadcasted so loudly that—if free speech is a culture we want to encourage—it is often a necessary evil at this point in the national conversation to state pro-speech stances in a loud, direct, and unequivocal way.** Statements couched in qualifiers and diplomatic phrasing just blend into the drab background noise of agreeable administrative policies. The letter was criticized for being attention-seeking, but that was its exact intent: to proudly draw attention to the idea of free inquiry as a crucial pillar of academic life. The fact that we have essentially devolved into a national shouting match over free speech may not make anyone particularly pleased, but it is necessary to acknowledge that the blunt and overly simplistic characteristics of the letter were a reflection of how our dialogue on the issue looks right now. But we must avoid devolving into a situation where administrators are just dictating pro-speech policy down to students. It is not constructive to impose normative statements as incontrovertible truths that must be accepted by students without debate. Unfortunately, a fair amount of free speech defense today takes the form of aggrieved op-eds penned by writers who are quite fond of lamenting the current state of young people or complaining loudly about “coddled millennials.” Unfortunately, these statements are often counterproductive. Will Creeley, vice president of legal and public advocacy at the Foundation for Individual Rights in Education, elaborated in an interview with the HPR, “I get nervous about the steady drumbeat of ‘kids these days’ articles where there’s some kind of imagined tension between ‘millennials’ and freedom of expression. I mean, I’m not that old. I remember that it’s not pleasant or interesting to be lectured by one’s elders. And I think that if we get to a position where free speech is older telling younger people to eat your vegetables, it becomes less useful.” There is an inherent hypocrisy in some parts of the free speech movement. The same individuals who believe that it is not constructive to dismiss people as racists readily dismiss young people as infantilized crybabies who cannot possibly comprehend why free speech is important. But to do so reveals an underlying intellectual smugness, insularity, and close-mindedness, a belief that vast swaths of people who have different opinions than you are simply not worth your time. It is a refusal to consider why people believe certain things or feel the way they do. This approach is unlikely to lead to the productive dialogue and engagement that advocates of free speech claim to value. Instead, it is crucial to characterize student activists fairly and attempt to understand their motivations. Conor Healy ’19 reflects, “I just think I’ve had more time to grow and understand exactly why people want to limit speech. I don’t think that these are necessarily bad people. I think they have noble intentions, and I have made a conscious effort to understand why there is so much emotion in this sphere and why people are so fervent about their beliefs on this issue.” The focus must be on engaging with, and not berating students—the next generation—and striving to convince them why allowing for all types of speech is tremendously crucial. Because despite the occasional shocking examples of censorship that are feverishly offered up in sensational Atlantic articles, most students do agree that free speech is important and should be protected. “I have read survey results showing that today’s students don’t appreciate the principles of free speech,” said Harvard psychology professor Steven Pinker in an email interview with the HPR. “But I have never witnessed it at Harvard. I’ve found that the students in my classes, my lab, and my office visits are completely reasonable and clear-thinking.” It is true that free speech is threatened on college campuses. **Too often, free inquiry is sacrificed as we grow increasingly more reluctant to poke the bear of cultural orthodoxy. But to properly defend free speech, we must return to its fundamental principles. We must engage with those we vehemently disagree with instead of continuing to shout past each other. Ultimately, free speech is an enormously important but fragile social practice, and everyone—students and administrators, liberals and conservatives, young and old—should strive to protect and cherish it.**

### Hitchens

#### Free speech is key to resist a culture of violence and censorship – this enables a paradigm of open deliberation

**Hitchens:** Hitchens, Christopher [Contributor, Readers Digest] “Christopher Hitchens on Freedom of Speech.” September 2014. RP

**In 1941, with war looming and our liberties imperiled, President Franklin D. Roosevelt reminded the nation not to lose sight of the ideals that make us strong — freedom to worship, freedom of speech, freedom from want, and freedom from fear**. Artist Norman Rockwell put on canvas his own vision for each of the freedoms, including this portrait of an ordinary citizen speaking his mind at a town hall meeting. Seventy years later, we’ve asked four remarkable Americans to reveal what these freedoms mean to them. **In our April 2011 issue, Vanity Fair columnist, author, and world-famous contrarian, the late Christopher Hitchens (Hitch-22), wrote about freedom of speech**. Whether he is arguing about the Iraq invasion or questioning the existence of God, Hitchens eloquently and unabashedly gives a spirited defense of the absolute right of free speech — even for those citizens who lack manners, judgment, and sanity. We belong to a species that loves to make lists and award rankings and then argue about which or who should be all-time No. 1. I am sure I would admire the United States Bill of Rights just as much in principle in whatever order the amendments came, but I take a special pleasure in the fact that the first of them all is the one that guarantees freedom of speech. Granted, this is in no small part due to a point of pride in that it makes my own profession seem especially significant and regards it as requiring particular protection. But it is also because I could make the case that it is the essential liberty, without which all the other freedoms are either impossible to imagine or impossible to put into practice. Those of us who take the amendment’s wording at face value — “Congress shall make no law … abridging …” — take it to mean no law. No special circumstances, no emergency, no unforeseen contingency can dilute the plain and straightforward meaning of those words or that phrasing. **We get ourselves called (and we proudly accept) a name that has a nice double meaning for me: First Amendment absolutists**. Here’s why I like this quasi-ironic term. **It commits us to an unshakable principle while it obliquely reminds us that absolutism is what the freedom of speech actually makes impossible. From the predawn of human history, despots have relied on the idea that, quite literally, their word is law, or absolute. Pre-Roman and Roman emperors sought to cloak this in the idea that they themselves were suprahuman and had themselves deified in their own lifetimes**. Later tyrants claimed to rule by “the divine right of kings,” an assertion that didn’t end until the 18th century. All modern successors, from Hitler to Khomeini to Kim Jong-il, have insisted that only one man or one party or one book represents the absolute truth, and to challenge it is folly or worse. But all it takes is one little boy to blurt out the inconvenient truth that the emperor is as naked as the day he was born, and with that, the entire edifice of absolutism begins to crumble. Grown-ups, of course, are more “sophisticated,” or the story wouldn’t be as potent as it is. Hardened by adulthood, they can always think of reasons to keep quiet and to keep others quiet as well. Should we, say, be able to discuss sex in print? Or publicly disagree with the government in time of war? Or offend the cherished ideas of others? The unfettered tongue and pen do not always produce results that make our lives easier or more comfortable. Mark Twain once observed sardonically that Americans were careful to make very sparing use of their precious and much-boasted liberty. But even he, the most popular figure in the country at the time, took care to conceal some of his more scornful views on religion and expansionist foreign policy. **My own opinion is a very simple one. The right of others to free expression is part of my own. If someone’s voice is silenced, then I am deprived of the right to hear.** Moreover, I have never met nor heard of anybody I would trust with the job of deciding in advance what it might be permissible for me or anyone else to say or read. **That freedom of expression consists of being able to tell people what they may not wish to hear, and that it must extend, above all, to those who think differently is, to me, self-evident.** **Of all the things I have ever written, the one that has gotten me the most unwelcome attention from people I respect is a series of essays defending the right of Holocaust deniers and other Nazi sympathizers to publish their views. I did this because I think a right is a right and also because if this right is denied to one faction, it will not stop there. (Laws originally passed in Europe to criminalize Holocaust denial are already being extended to suppress criticism of Islam, as a case in point.)** But I could also argue it pragmatically. Hitler’s Mein Kampf is a book that is banned in some countries and very hard to get in others. But the rare translated edition I possess was published by a group of German exiles at the New School in New York in 1938. It is complete and unexpurgated, with many pages of footnotes and cross-references. The Fuhrer’s enemies considered it of urgent importance that everybody study the book and understand the threat it contained. Alas, not enough people read it in time. Almost all the celebrated free speech cases in the human record involve the strange concept of blasphemy, which is actually the simple concept that certain things just cannot be said or heard. The trial of Socrates involved the charge that his way of thinking caused young people to disrespect the gods. During the trial of Galileo, his findings about astronomy were held to subvert the religious dogma that our earth was the center and object of creation. The Scopes Monkey Trial in Dayton, Tennessee, involved the charge that Charles Darwin’s On the Origin of Species  was profane and immoral as well as untrue. We look back on these moments when the authorities, and often the mob as well, decided to blind and deafen themselves and others, and we shake our heads. But with what right? There are many contemporary threats to the principle and the practice of free expression. **I would nominate the theocratic one as the most immediately dangerous. Ever since the religious dictator of Iran sponsored a murder campaign against a British-Indian novelist named Salman Rushdie, this time for authoring a work of fiction, there has been a perceptible constraint on the way people discuss the Islamic faith in public. For instance, when a newspaper in Denmark published some caricatures of the prophet Mohammed a few years ago, there was such an atmosphere of violence and intimidation that not a single mainstream media outlet in the United States felt able to reproduce the images so that people could form their own view. Some of this was simple fear. But some of it took a “softer” form of censorship**. It was argued that tender sensibilities were involved — things like good community relations were at stake, and a diverse society requires that certain people not be offended. Democracy and pluralism do indeed demand a certain commitment to good manners, but Islam is a religion that makes very large claims for itself and can hardly demand that such claims be immune from criticism. Besi**des, it’s much too easy to see how open-ended such a self-censorship would have to be.** If I, for example, were to declare myself terribly wounded and upset by any dilution of the First Amendment (as indeed I am), I hope nobody would concede that this conferred any special privileges on me, especially if my claim of privilege were to be implicitly backed by a credible threat of **violence. Other attempts at abridging free expression also come dressed up in superficially attractive packaging. As an example, surely we should forbid child pornography? In a sense this is a red herring: Anybody involved in any way in using children for sex is already prosecutable for a multitude of extremely grave crimes. Free expression doesn’t really come into it. The censor is more likely to prosecute a book like Nabokov’s Lolita and yet have no power to challenge porn czars. And surely the spending of money isn’t a form of free speech, as our Supreme Court has more than once held it is, most recently, as pertaining to political campaign contributions. I’m not so sure: The most impressive grassroots campaign of my lifetime — Senator Eugene McCarthy’s primary challenge to President Johnson in 1968 — was made possible by a few rich individuals who told him to go ahead and not worry about a slender war chest.** **And who is entitled to make the call about who may spend how much? Again, I haven’t been able to discover anybody to whom I would entrust that job. The same objection applies to what is called hate speech. Here, again, there is no known way of gauging the influence of rhetoric on action.** Try a thought experiment. Go back in time and force Sarah Palin, by law, to remove the “target” or “crosshair” symbols from certain electoral districts. Now are you confident that you will have soothed the churning mind of a youthful schizophrenic in Tucson, Arizona? I didn’t think so. Sane people can take a lot of militant rhetoric about politics. Insane people can be motivated by believing themselves to be characters in The Catcher in the Rye, a book I am glad is not banned. “**National security” is one of the oldest arguments here, for the good reason that it is always disputable.** The purloining and dissemination of private documents written by other people, for example, is not always necessarily free expression, let alone free speech. It can also involve the exposure of third parties to danger, as appears to have been the case in the downloading of classified documents by Army private Bradley Manning and their use by Julian Assange and WikiLeaks. We are all hypocrites here: I have myself written several articles based on Assange’s disclosures, while publicly disapproving of his tactics in acquiring the material in the first place. (And I didn’t need to read the list of terrorist-vulnerable facilities, including vaccine factories, that he dumped before me and who knows who else.) But in this age of ultrahacking, no law would have prevented these leaks, nor do such laws have much effect, and they never have. In a more slow-moving epoch, President Lincoln suspended habeas corpus and subjected certain editors to military censorship, though I have never seen it argued that he helped the war effort much by doing so. The claim to possess exclusive truth is a vain one. And, as with other markets, the ones in ideas and information are damaged by distortion and don’t respond well to clumsy ad hoc manipulation. **And speaking of markets, consider the work of the Indian economist Amartya Sen, who demonstrated that no substantial famine has ever occurred in a country that has uncensored information. Famines are almost invariably caused not by shortage of food but by stupid hoarding in times of crisis, practiced by governments that can disregard public opinion. Bear this in mind whenever you hear free expression described as a luxury. In my career, I have visited dozens of countries undergoing crises of war or hardship or sectarian strife. I can say with as much certainty as is possible that, wherever the light of free debate and expression is extinguished, the darkness is very much deeper, more palpable, and more protracted. But the urge to shut out bad news or unwelcome opinions will always be a very strong one, which is why the battle to reaffirm freedom of speech needs to be refought in every generation.**

### Sachs

#### Microaggressions are invalidated by white people – minorities are the only ones who can know how it feels.

**Sachs:** Sachs, George [Psychologist and contributor, Huffington Post] “10 Ways White Liberals Perpetuate Racism.” Huffington Post. September 2015. RP

Last week an article was published in the September issue of the The Atlantic titled [“The Coddling of the American Mind.”](http://traffic.pubexchange.com/a/c58811b4-27d9-46ab-907c-5f8ee624e840/a609a62f-6b7f-4992-86c4-0775ebc1eede/http%3A%2F%2Fwww.theatlantic.com%2Fmagazine%2Farchive%2F2015%2F09%2Fthe-coddling-of-the-american-mind%2F399356%2F) The goal of the article was to show that college students (a.k.a. Millennials) are increasingly rigid in their language, especially those words or phrases involving race, gender, religion, or any other target status. This is commonly referred to as political correctness. The authors’ thesis was that “college students are increasingly demanding protection from words and ideas they don’t like.” They go on to conclude that this political correctness is unhealthy and “disastrous” for education and mental health. The photograph that accompanied the article was of a small child, age three or four, sitting at a desk with the words “college” written across his sweatshirt. The Atlantic was sending a clear message: College students are immature babies. I read this article with disbelief. It reminded me of the language debates of the sixties and seventies when college students were at the front-line of desegregation, choosing to use words that appeared rigid in their day, but in historic terms, were at the vanguard of contemporary thought about race. The word “African-American” or “LGBTQ” may have sounded long and verbose, and were discounted by the established mainstream press, but it set the standard for years to come. In the past, as in today, college students, in their focused choice of words and phrases, set the bar for others to follow. And follow we will. Perhaps you agree with The Atlantic and think that college students are just too uptight and politically correct. **Most of The Atlantic readers are liberal White Americans who are doing their part to make the world a better place for all creeds and colors. Like many 40-something White liberals, I too assume I’m relatively [they’re] open-minded and conscious of my white privilege. “I’m not a racist,” I say to myself, when images of police brutality flash on the screen.** “I’m not like those white people.” Or am I? Like me, you probably voted for Barack Obama, were outraged by the verdicts in the Trayvon Martin, Michael Brown and Eric Garner cases. **You even work hard to check your white privilege at the door when going to a #blacklivesmatter protest march.** We are one of the millions of white people willing to make a change for the betterment of our country. We actually live by the words of our Declaration of Independence, that “all men are created equal.” **At times, though, we feel a distance from our black and Latino friends; a noticeable energetic gulf that separates us from a deeper connection with them.** We want to be closer to people of color. Yet somehow, some way, we sense a wall between us. We wonder: Is it me or them? **Maybe years of racism have made it hard for people of color to trust White folks—even Atlantic magazine liberals like you and me. Or maybe we’re saying or doing something racially insensitive—perpetuating racism and white privilege**. And we don’t even know it. Maybe the millennials know best. **Microinvalidations are momentary acts that serve to invalidate the very people of color we care about. These unconscious interactions perpetuate the hopelessness many African-Americans, Latinos, Native Americans, and other people of color, feel in this country. Many of you may stop reading now, thinking, “Here we go with the political correctness.” You say to yourself: “I’m not perpetuating racism, and I’m certainly not invalidating people of color. Donald Trump may be, but not me.” That’s what I used to think. But, right there, you’re committing a microinvalidation. It’s called Denial. Racism just won’t die, because its roots are deep. Somewhere down where we don’t like to go, is a place where racism lives. It’s automatic and hidden. Binding and resistant to change. No matter how well-meaning we are, no matter how open-minded.** Like the “root kit” on a computer, racism is hidden and operating without our knowledge. Paul Pendler, Psy.D., of the Department of Psychiatry & Behavioral Sciences, Feinberg School of Medicine, Northwestern University Medical School and Phillip Beverly, Ph.D., Department of History, Philosophy, and Political Science at Chicago State University, wrote The Racism Root Kit: Understanding the Insidiousness of White Privilege. The paper suggests that White people defer to an internal “root kit,” or set of ingrained responses, to cover our racial biases and shut down those who intend to make us face them. Just like The Atlantic magazine did to today’s college students. Beverly and Pendler reference the work of Derald Wing Sue, PhD: “Sue and his colleagues delineated three forms of microaggressions: microassault, microinsult, and microinvalidation. Microassaults are explicit racial slurs with the intention to hurt an intended victim through name-calling. **Microinsults are subtle communications that convey rudeness and attempt to demean one’s racial identity. Finally, microinvalidations are comments that intend to exclude or nullify the feelings or experiences of persons of color.” Too often these microaggressions, in particular microinvalidations, go unchallenged by people of color, due to the inherent power imbalance felt with White people. Racism is experienced, but not acknowledged. When a person of color does take issue with those types of encounters, many well-meaning White liberals, myself included, can become overly apologetic, defensive, or even offended when confronted with the subtle indignity of our words or actions. These knee-jerk defenses are actually how we as white liberals end up perpetuating racism**. Thus, true self-awareness and deeper relationships with people of color never really happen. This is what young people know instinctively. And what older white Liberals like you and me have a hard time understanding. There’s a problem when we champion change, then hide from it when it really counts. Like it or not, **White superiority is well defended and protected. It may be unintentional. It’s likely unconscious. Without more introspection and sincere interaction, the racism train keeps rolling**. Right now, you might feel angry and misjudged. Maybe you’re a white liberal shaking your head, feeling slighted and angered by the lack of acknowledgement, regarding your efforts and accomplishments concerning racial sensitivity. After all, white liberals are the white folks who really get it. Right? Wrong. This is, in fact, another microinvalidation. Beverly and Pendler call that particular microaggression “attack by racial resume.” We say, “Look at all the work I’ve done on behalf of people of color! I’m one of the good ones!” If you’re still with me, and aren’t in total denial, consider these 10 ways white liberals engage in subtle racism, as offered in Pendler and Beverly’s The Racism Rootkit: Understanding the Insidiousness of white Privilege: 1. Denial: Denying we could ever have racist thoughts, or that we reap the benefits as a member of the majority race, is a common defense of liberal White Americans. By denying the existence of our racist thoughts, we negate the depth of the racial divide. “But I don’t even see color.” As if by being color-blind we can resolve the racial pain people of color live out. Pendler and Beverly note, “An inability to be open to the possibility that the experience of the other could be valid is a consistent element of white supremacy.” 2. Shame & Hurt: When focus remains on the White person, and our emotional wounds, this is classic deflection and redirection. “I’m so embarrassed I said that!” This common phrase can be heard when something hurtful may have been said to a person of color. The truly injured party, however, remains unrecognized. By having the courage to confront a racial slight, a person of color is made to feel that they have misread us, or hurt our feelings. We might also say: “I’m hurt that you think of me like that.” This further draws the attention back to us, and away from the real issue of pain felt by the person of color. When sympathy transfers to the white person, no awareness or learning occurs. No trust is built. Try this next time you’re confronted with something insensitive: “I hear how my words or actions hurt you. Thank you for pointing that out to me.” 3. Narcolepsy & Ignorance: Shutting down or going blank is referred to as “race-related narcolepsy.” Racism retains a foothold when white people reach a threshold in their racial sensitivity and invoke their white privilege to “check out,” and go silent, instead of sticking out the racial awareness process. The other side of that coin is simply to choose ignorance. “I had no idea about that!” You’re feeling of being clueless leads to detachment. The responsibility to look inward is traded for making the person of color “assume the responsibility for bringing cultural and racial awareness to the surface.” 4. Masochism: When a white liberal’s guilt runs amuck, it may become a deep-seated need to take his or her racial lumps. Taking the neighborhood’s homeless black man in for a meal may help him, but does the giving come from a place of joy or guilt? What happens when he steals from you? In retrospect, was your original act helpful or masochistic? Perhaps a $10 donation on the street might have served both of you better. **White liberals, who unconsciously seek self-punishment for historical oppression, appear racially sensitive. But they actually perpetuate racism by simply becoming “a receptacle for potential and actual abuse,” instead of examining their racially-biased behavior**. 5. Apology & Faux Compassion: “I’m so sorry. I feel your pain.” This is an example of a deflective technique many white people use to draw attention away from an initial, biased encounter. Again, not taking time to look inward stops short of sincere sensitivity. Pendler and Beverly comment, “While displaying empathy toward another is often associated with an act of connection, the speed with which white people rush to express sympathy and understanding, at the expense of acknowledging their participation in racist behavior and ideology, discourages a deep relational connection in the moment.” Basically, don’t apologize first. Try this instead: “I’m here to listen and learn.” 6. Defensiveness: “But you know me. I’m not a racist! This response to confrontation happens all the time. A white person reminds black people that they personally owned no slaves, their relative marched with Dr. King, and they were into NWA before they got big—-so obviously they’re in the clear regarding racism. Defensiveness is intended to end the discussion, absolve him or her, and quiet accusations surrounding white privilege. You really just built a brick wall. 7. The Pain Game: “You’re not the only ones. My family was wiped out in the Holocaust.” **These microinvalidations are meant “to silence, diminish and denigrate the experience of the person of color**.” Comparisons made to other races or cultural groups are insensitive. Creating a “contest of pain” keeps racist language alive, highlights deep insensitivity, and is yet another deflection from the initial microinvalidation that, if explored, could be enlightening. I notice that American Jews, myself included, use this microinvalidation often, comparing slavery and 300 years of oppression to the Holocaust. This is not the bridge to connection as intended, but rather brings the focus back to the White person, further invalidating the person of color. 8. Racial Resume:   Many White liberals keep a mental, multicultural resume to be submitted as evidence of racial tolerance and support “I voted for Obama!” However, talking about how we have Black friends, coached an inner-city basketball team, or live in a racially-mixed neighborhood does not excuse us from internal racial insensitivity. This microinvalidation denies the person of color their feelings because they then have to argue with our resumes. 9. White Guilt: According to The Racism Root Kit: Understanding the Insidiousness of white privilege, a person experiencing white guilt will attempt “to provide comfort as if to ‘make up’ for the indignation expressed by the person of color.” “I feel terrible about all the police brutality against black people.” We may want to “do the right thing,” but because no real change or self-examination is engaged, no awareness takes place. 10. Intellectualization: As a defensive tool, a white person might bring up societal exceptions, and success stories to negate the experience of someone who challenges their racial biases. “But we have a black president!” These examples are held up as reasons why we can dismiss the experience of the person of color: “...because logically the person of color should not be having the experience they are having.” If you’re still with me and not asleep, checked out, totally confused, overwhelmed or defensive, then you’re probably an open-minded white person. If we as white liberals want to walk the walk, we have to do more. We have to acknowledge the uncomfortable value of political correctness as a change agent. If we truly want a different world, let’s ask ourselves: Is it possible that I might unintentionally say something that might be perceived as invalidating by people of color? Can I take an honest inventory of my unintentional microinvalidations, if the person of color confronts me? What is my go-to defense? Denial? Hurt? Faux Compassion, Pain Game, Intellectualization? Can I engage with people of color without deferring to internal defenses, especially when my unintended microinvalidations and unconscious sense of superiority are confronted? Can I be open to the impact of my words, expressing interest and caring how my actions have been perceived? Can I simply say: “I wasn’t aware my words or actions hurt you. Tell me more so I can learn?” These are tough questions. It hurts to know that my words might have invalidated another, and that I may have contributed subtly to racism. For a 40-something White liberal, I’m acknowledging I have more to learn. Millennials seem know that in the smallest of words is where the greatest of pain lies. Only through continued growth, awareness and acknowledgement that #wordsmatter can something as ugly as racism be overcome.

### Jaschik – Protecting Academic Freedom

#### The First Amendment protects faculty scholarship – Garcetti case doesn’t apply.

**Jaschik:** Jaschik, Scott [Contributor, Inside Higher Ed]” Protecting Academic Freedom.” February 2014. RP

**A federal appeals court has given a strong endorsement to the idea that faculty speech rights at public colleges and universities were not constrained by a 2006 Supreme Court ruling that limited the rights of some public employees**. The 2006 ruling, Garcetti v. Ceballos, concerned the Los Angeles district attorney's ofDce. Despite that, some courts have been applying the ruling to faculty disputes at public universities -- while others have not. The new ruling – by the U.S. Court of Appeals for the Ninth Circuit – comes in a three-judge panel’s revised opinion on the case of David Demers, a tenured professor at Washington State University who says he was retaliated against with negative performance reviews for writings that criticized the administration. **The appeals court did not rule on the merits of the case, and as it did in its Drst look at the Demers suit, it said that his free speech wasn’t limited by the Garcetti ruling. But the language in the new ruling was quite strong – the kind of language many faculty advocates have been looking for. The appeals court acknowledged that Garcetti set limits for public employees, but said there was no question that those limits should not apply in higher education**. “Garcetti left open the possibility of an exception,” the appeals court said. “In response to a concern expressed by Justice Souter in dissent, the court reserved the question whether its holding applied to ‘speech related to scholarship or teaching.’ Justice Souter had expressed concern about the potential breadth of the court’s rationale, writing, ‘I have to hope that today’s majority does not mean to imperil First Amendment protection of academic freedom in public colleges and universities.’ ” The appeals court added that “Demers presents the kind of case that worried Justice Souter. Under Garcetti, statements made by public employees ‘pursuant to their ofDcial duties’ are not protected by the First Amendment. But teaching and academic writing are at the core of ofDcial duties of teachers and professors. Such teaching and writing are a special concern of the First Amendment. **We conclude that if applied to teaching and academic writing, Garcetti would directly conflict with the important First Amendment values previously articulated by the Supreme Court.” Further the court noted that the First Amendment, as interpreted in other Supreme Court decisions, applies to faculty speech that may not be strictly scholarship or teaching, but may relate to discussions of college policy**. “[P]rotected academic writing is not conDned to scholarship,” the appeals court said. “Much academic writing is, of course, scholarship. But academics, in the course of their academic duties, also write memoranda, reports, and other documents addressed to such things as a budget, curriculum, departmental structure and faculty hiring.” Robert O’Neil, former president of and professor of law at the University of Virginia, and an expert on faculty free speech issues, said via email that the latest decision from the appeals court added to the view he shares that Garcetti should not be applied to higher education. The new decision has “a level of certainty and conviction -- a slightly sharper edge, if you will -- which further narrows adverse inferences from Garcetti,” he said.

### Levinson

#### Meta study of First Amendment jurisprudence confirms that academic freedom is a First Amendment issue

**Levinson:** Levinson, Rachel [AAUP Senior Counsel] “Academic Freedom and the First Amendment.” *American Association of University Professors.* July 2007. RP

Because the First Amendment applies only to governmental actors, this outline focuses primarily on public institutions. Sources of Academic Freedom Rights Academic freedom has a number of sources; the protection it affords in a given circumstance can depend on a variety of factors, including state law, institutional custom and policy, and whether the institution is public or private. The notion of academic freedom was originally given legal recognition and force in a series of post-McCarthy-era Supreme Court opinions that invoked the First Amendment to the U.S. Constitution. A. First Amendment – Text and Interpretations 1. **Text: The text of the First Amendment to the U.S. Constitution, “Congress shall make no law . . . abridging the freedom of speech,” makes no explicit mention of academic freedom. However, many courts that have considered claims of academic freedom – including the U.S. Supreme Court – have concluded that there is a “constitutional right” to academic freedom in at least some instances, arising from their interpretation of the First Amendment.** 2. Judicial Origins: **During the McCarthy era, a number of employers began to require teachers (and other public employees) to sign statements assert that they were not involved in any subversive groups. In response to these cases, the U.S. Supreme Court began to codify the notion of constitutional academic freedom. a. Adler v. Board of Education**, 342 U.S. 485 (1952) (Douglas, J., dissenting). This case involved a New York state statute that essentially banned state employees from belonging to “subversive groups” – groups that advocated the use of violence in order to change the government. Under the statute, public employees were forced to take loyalty oaths stating that they did not belong to subversive groups in order to maintain their employment. While the Supreme Court’s decision upheld the state statute, Justice Douglas’ dissent contains the first mention of academic freedom in a Supreme Court case. Referring to the process by which organizations were found “subversive,” Justice Douglas asserted that “[t]he very threat of such a procedure is certain to raise havoc with academic freedom. . . . A teacher caught in that mesh is almost certain to stand condemned. Fearing condemnation, she will tend to shrink from any association that stirs controversy. In that manner freedom of expression will be stifled.” Douglas said that because the law excluded an entire viewpoint without a showing that the invasion was needed for some state purpose, it impermissibly invaded academic freedom. b**. Wieman v. Updegraff, 344 U.S. 183 (1952). Wieman, decided shortly after Adler, involved a state-imposed loyalty oath that required Oklahoma professors to promise that they had never been part of a communist or subversive organization. Professors at one state college refused to take the oath, and an Oklahoma taxpayer sued to block the college from paying their salaries. A concurring opinion by Justices Douglas and Frankfurter was based on** First Amendment academic freedom grounds**;** Justice Frankfurter’s concurrence specifically emphasizes the importance of academic freedom and teaching as a profession uniquely requiring protection under the First Amendment. In Justice Frankfurter’s words: Such unwarranted inhibition upon the free spirit of teachers affects not only those who . . . are immediately before the Court. It has an unmistakable tendency to chill that free play of the spirit which all teachers ought especially to cultivate and practice; it makes for caution and timidity in their associations by potential teachers. . . . Teachers must . . . be exemplars of open-mindedness and free inquiry. They cannot carry out their noble task if the conditions for the practice of a responsible and critical mind are denied to them. They must have the freedom of responsible inquiry, by thought and action, into the meaning of social and economic ideas, into the checkered history of social and economic dogma. c. **Sweezy v. New Hampshire, 354 U.S. 234 (1957). Sweezy marks a landmark in the Court’s recognition and acceptance of academic freedom, and of academic freedom’s grounding in the Constitution.** Sweezy, a professor at the University of New Hampshire, was interrogated by the New Hampshire Attorney General about his suspected affiliations with communism. Sweezy refused to answer a number of questions about his lectures and writings, but did say that he thought Marxism was morally superior to capitalism. The Supreme Court accepted Justice Frankfurter’s reasoning from Wieman and stated its belief that academic freedom is protected by the Constitution. In addition, Justice Frankfurter outlined the “four essential freedoms” of a university: "to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study." d**. Keyishian v. Bd. of Regents, 385 U.S. 589 (1967). This case finally** extended First Amendment protection to academic freedom. Faculty at the State University of New York at Buffalo were forced to sign documents swearing that they were not members of the Communist Party. The faculty members refused to sign the documents and were fired as a result. Because of Adler, the New York State Law prohibiting membership in subversive groups was still in effect. This time, however, the Court specifically overturned its decision in Adler, ruling that by imposing a loyalty oath and prohibiting membership in “subversive groups,” the law unconstitutionally infringed on academic freedom and freedom of association. As the Court held: “Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned**. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom**.” Sometimes colleges and universities decide to bestow specific academic freedom rights upon professors via school policy. Internal sources of contractual obligations may include institutional rules and regulations, letters of appointment, faculty handbooks, and, where applicable, collective bargaining agreements. Academic freedom rights are often explicitly incorporated into faculty handbooks, which are sometimes held to be legally binding contracts. See, e.g., Greene v. Howard University, 412 F.2d 1128 (D.C. Cir. 1969) (ruling faculty handbook “govern[ed] the relationship between faculty members and the university”). See also Jim Jackson, “Express and Implied Contractual Rights to Academic Freedom in the United States,” 22 Hamline Law Review 467 (Winter 1999). See generally AAUP Legal Technical Assistance Guide, “Faculty Handbooks As Enforceable Contracts: A State Guide” (2005 ed.). Academic freedom is also often protected as part of "academic custom" or "academic common law." Courts analyzing claims of academic freedom often turn to the AAUP’s Joint 1940 Statement of Principles on Academic Freedom and Tenure. The 1940 Statement provides a measured definition of academic freedom, stating: Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties. . . . Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject. . . . **College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations.** As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution. AAUP, Policy Documents and Reports, 3-4 (10th ed. 2006) (hereafter “Redbook”). As the U.S. Court of Appeals for the District of Columbia Circuit observed in Greene v. Howard University: Contracts are written, and are to be read, by reference to the norms of conduct and expectations founded upon them. This is especially true of contracts in and among a community of scholars, which is what a university is. The readings of the market place are not invariably apt in this non-commercial context. The U.S. Supreme Court explicitly recognized the importance of this type of contextual analysis in Perry v. Sindermann, 408 U.S. 593, 601 (1972). In Perry, the Court held that just as there may be a "common law of a particular industry or of a particular plan," so there may be an "unwritten 'common law' in a particular university" so that even though no explicit tenure system exists, the college may "nonetheless . . . have created such a system in practice.” Similarly, another federal appeals court found that jointly issued statements of AAUP and other higher education organizations, such as the 1940 Statement, "represent widely shared norms within the academic community" and, therefore, may be relied upon to interpret academic contracts. Browzin v. Catholic University of America, 527 F.2d 843, 848 n. 8 (D.C. Cir. 1975); see also Roemer v. Board of Public Works of Maryland, 426 U.S. 736 (1976) (relying on 1940 Statement’s definite of academic freedom); Tilton v. Richardson, 403 U.S. 672 (1971) (same); Bason v. American University, 414 A.2d 522 (D.C. 1980) (noting the "customs and practices of the university"); Board of Regents of Kentucky State University v. Gale, 898 S.W.2d 517 (Ky. Ct. App. 1995) (examining the "custom" of the academic community in defining the meaning of "endowed chair" and whether the position carried tenure).

#### The First Amendment applies to teaching and publishing in the classroom

**Levinson:** Levinson, Rachel [AAUP Senior Counsel] “Academic Freedom and the First Amendment.” *American Association of University Professors.* July 2007. RP

#### 

**One of the most fertile areas for claims of academic freedom and First Amendment protection is, of course, classroom teaching. Speech by professors in the classroom at public institutions is generally protected under the First Amendment and under the professional concept of academic freedom if the speech is relevant to the subject matter of the course. See, e.g., Kracunas v. Iona College, 119 F.3d 80, 88 & n. 5 (2d Cir. 1997) (applying the "germaneness" standard to reject professor's academic freedom claim because "his conduct [could not] be seen as appropriate to further a pedagogical purpose," but noting that "[t]eachers of drama, dance, music, and athletics, for example, appropriately teach, in part, by gesture and touching").** At private institutions, of course, the First Amendment does not apply, but professors at many institutions are protected by a tapestry of sources that could include employment contracts, institutional practice, and state court decisions. **The specific areas of classroom speech could include, among others, the following: Are faculty members able to select and use pedagogical methods they believe will be effective in teaching the subject matter in which they are expert**? Faculty members are, of course, uniquely positioned to determine appropriate teaching methods. Courts may restrict professors’ autonomy, however, when judges perceive teaching methods to cross the line from pedagogical choice to sexual harassment or methods irrelevant to the topic at hand. 1**. Hardy v. Jefferson Community College**, 260 F.3d 671 (6th Cir. 2001), cert. denied, 535 U.S. 970 (2002). In Hardy, an African- American student and a "prominent citizen" complained about the allegedly offensive language used by Kenneth E. Hardy, an adjunct communications professor, in a lecture on language and social constructivism in his "Introduction to Interpersonal Communication" course. The students were asked to examine how language "is used to marginalize minorities and other oppressed groups in society," and the discussion included examples of such terms as "bitch," "faggot," and “nigger." While the administration had previously informed Professor Hardy that he was scheduled to teach courses in the fall, after the controversy erupted the administration told him that no classes were available. A federal appeals court concluded that the topic of the class – "race, gender, and power conflicts in our society" – was a matter of public concern and held that "a teacher’s in-class speech deserves constitutional protection." The court opined: "Reasonable school officials should have known that such speech, when it is germane to the classroom subject matter and advances an academic message, is protected by the First Amendment." **2. Vega v. Miller**, 273 F.3d 460 (2d Cir. 2001), cert. denied, 535 U.S. 1097 (2002) Not all courts agree that individual professors have the academic freedom to select the pedagogical tools they consider most appropriate to teach their subject matter. In Vega v. Miller, for example, Edward Vega, a non-tenure-track professor of English, sued the New York Maritime College when the state-run college declined to reappoint him after he led what the college referred to as an "offensive" classroom exercise in “clustering" (or word association) in a remedial English class. The clustering exercise required students to select a topic and then call out words related to the topic. In Professor Vega's summer 1994 class, the students selected the topic of sex, and the students called out a variety of words and phrases, from "marriage" to "fellatio." Administrators found that the professor's conduct "could be considered sexual harassment, and could create liability for the college," and therefore decided not to renew his contract. Vega argued that the nonreappointment violated his constitutional academic freedom. The federal appeals court sided with the administrators, holding that at the time they made their decision on Vega’s contract, no court opinion had conclusively determined that an administration’s discipline of a professor for not ending a class exercise violated the professor’s clearly established First Amendment academic freedom rights. The same court has, however, recognized as constitutionally protected a professor’s First Amendment academic freedom "based on [his] discussion of controversial topics in the classroom." Dube v. State University of New York, 900 F.2d 587, 597-98 (2d Cir. 1990), cert. denied, 501 U.S. 1211 (1991). See also Cohen v. San Bernardino Valley College, 92F.3d 968 (9th Cir. 1996), cert. denied, 520 U.S. 1140 (1997), and Silva v. University of New Hampshire, 888 F. Supp. 293 (D.N.H. 1988) (declining to apply institutional sexual harassment policies to punish professor who used "legitimate pedagogical reasons,” which included provocative language, to illustrate points in class and to sustain his students' interest in the subject matter of the course). 3. Bonnell v. Lorenzo (Macomb Community College), 241 F.3d 800, cert. denied, 534 U.S. 951 (2001). Of course, a professor's First Amendment right to academic freedom is not absolute. As First Amendment and academic freedom scholar William Van Alstyne has said, “There is . . . nothing . . . that assumes that the First Amendment subset of academic freedom is a total absolute, any more than freedom of speech is itself an exclusive value prized literally above all else.” Van Alstyne, "The Specific Theory of Academic Freedom and the General Issue of Civil Liberty," in The Concept of Academic Freedom 59, 78 (Edmund L. Pincoffs ed., 1972). And so, even when courts recognize the First Amendment right of academic freedom for individual faculty members, courts often balance that interest against other concerns. In Bonnell v. Lorenzo, a federal appeals court upheld Macomb Community College’s suspension of John Bonnell, a professor of English, for creating a hostile learning environment. A female student sued the professor, claiming that he had repeatedly used lewd and graphic language in his English class. While recognizing the importance of the First Amendment academic freedom of the professor, the court concluded that “[w]hile a professor's rights to academic freedom and freedom of expression are paramount in the academic setting, they are not absolute to the point of compromising a student’s right to learn in a hostile-free environment.” Significantly, unlike the speech in Hardy, the court found Bonnell’s use of vulgar language “not germane to the subject matter” and therefore unprotected. B. Curricular Choices and Academic Freedom The right of teachers "to freedom in the classroom in discussing their subject" under the 1940 Statement is inextricably linked to the rights of professors to determine the content of their courses. The AAUP’s Statement on Government of Colleges and Universities provides that faculty have "primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction." As one commentator noted: "Faculty will always have the best understanding of what is essential in a field and how it is evolving." Steven G. Poskanzer, Higher Education Law: The Faculty 91 (The Johns Hopkins University Press 2002). Moreover, the expertise of a professor and a department helps insulate administrators and trustees from political pressures that may flow from particularly controversial courses. 1. Axson-Flynn v. Johnson, 356 F.3d 1277 (10th Cir. 2004). One case that directly raises the issue of academic freedom in determining curriculum—as well as the tension between the academic freedom of professors and the academic freedom of students —is Axson-Flynn v. Johnson. Christina Axson-Flynn was a Mormon student at the University of Utah, who, she says, told the theater department before being accepted that she would not "take the name of God or Christ in vain" or use certain "offensive" words. After she was accepted into the program, she changed some words in assigned scripts for in-class performances so as to avoid using words she found offensive. Her professors warned her that she would not be able to change scripts in future assignments. Axson-Flynn dropped out of the special theater program and sued her professors, arguing that her First Amendment rights to free speech and free exercise of religion had been violated. In 2001, a federal trial court ruled against Axson-Flynn. The court reasoned that if the program requirements constituted a First Amendment violation, "then a believer in ‘creationism' could not be required to discuss and master the theory of evolution in a science class; a neo-Nazi could refuse to discuss, write or consider the Holocaust in a critical manner in a history class." The federal appeals court agreed that courts should defer to faculty members’ professional judgment with respect to teaching and curriculum, but sent the case back for the trial court to determine whether the professors’ rationale for compelling Axson-Flynn to perform the scripts as written “was truly pedagogical or whether it was a pretext for religious discrimination.” The court ruled that the teachers were allowed to compel speech from Axson-Flynn as long as doing so was “reasonably related to pedagogical concerns.” Although the court did not recognize a specific right to academic freedom within the First Amendment, it did observe that within the university context, the First Amendment had special significance. 2. Yacovelli v. Moeser, Case No. 02-CV-596 (M. D. N.C., Aug. 15, 2002), aff'd,Case No. 02-1889 (4th Cir. Aug. 19, 2002). One widely publicized example of a curriculum controversy involved the 2002 summer reading program at the University of North Carolina (UNC) at Chapel Hill. At the beginning of the school year, UNC scheduled a schoolwide discussion for all new students based on the book Approaching the Qur'an: The Early Revelations, by Michael Sells, a professor at Haverford College. A group of students and taxpayers sued to halt the summer program, arguing that the assignment of the book violated the First Amendment doctrine of separation of church and state under the "guise of academic freedom, which is often nothing other than political correctness in the university setting." The university argued that the program was not endorsing or promoting a particular religion, and that if the court issued an injunction it would chill academic freedom because "the decision was entirely secular, academic, and pedagogical." As one English professor inquired: "Would next year’s committee be forbidden to require incoming students to read The Iliad, on the grounds that it could encourage worship of strange, disgraceful gods and encourage pillage and rape?" The federal trial court ruled in favor of the university and denied the plaintiffs’ request to halt the reading sections, holding: "There is obviously a secular purpose with regard to developing critical thinking, [and] enhancing the intellectual atmosphere of a school for incoming students." The day of the reading program, the federal appeals court upheld the trial court's ruling. In general, academic courses are not subject to a legal mandate for "equal time" to explore the “other side” of an issue. As Justice Stevens noted in his concurrence in the Supreme Court case Widmar v. Vincent, 454 U.S. 263,278-79 (1981), the "judgments" about whether to prefer a student rehearsal of Hamlet or the showing of Mickey Mouse cartoons "should be made by academicians, not by federal judges." 3. Linnemeir v. Board of Trustees, Indiana University-Purdue University, Fort Wayne, 260 F.3d 757 (7th Cir. 2001). Similarly, another federal appellate court ruled that faculty approval of a controversial play selected by a student for his senior thesis, which offended some religious individuals, did not violate the First Amendment. In Linnemeir, some Indiana taxpayers and state legislators sued to force Indiana University-Purdue University (IPFW) to halt the campus production of Terrence McNally's play Corpus Christi, which had been unanimously approved by the theater department faculty committee. The taxpayers and legislators argued that the play was an “undisguised attack on Christianity and the Founder of Christianity, Jesus Christ," and claimed that performance of the play on a public university campus therefore violated the First Amendment’s guarantee of separation of church and state. The federal appeals court permitted the play to be performed. The majority opined: "The contention that the First Amendment forbids a state university to provide avenue for the expression of views antagonistic to conventional Christian beliefs is absurd." It continued: "Classrooms are not public forums; but the school authorities and the teachers, not the courts, decide whether classroom instruction shall include works by blasphemers. . . . Academic freedom and states' rights alike demand deference to educational judgments that are not invidious." 4. Edwards v. California University of Pennsylvania, 156 F.3d 488 (3rd Cir. 1998),cert. denied, 525 U.S. 1143 (1999). Another federal appellate court has ruled that professors have no First Amendment right of academic freedom to determine appropriate curriculum, though under somewhat different circumstances. In Edwards, Dilawar M. Edwards, a tenured professor in media studies, sued the administration for violating his right to free speech by restricting his choice of classroom materials in an educational media course. The classroom materials, which emphasized issues of “bias, censorship, religion and humanism,” had been disapproved by the media studies department, which had voted to use an earlier version of the syllabus. The court concluded that because “a public university professor does not have a First Amendment right to decide what will be taught in the classroom,” it was not relevant whether the professor’s course content was “reasonably related to a legitimate educational interest.” The court’s conclusion, however, appears to have been influenced by the fact that Edwards’ departmental colleagues had approved a different syllabus – reinforcing the principle that professors as a whole, if not always individual professors, have the right to determine curricular focus. 5. FAIR v. Rumsfeld, 547 U.S. (2006). This Supreme Court case involved a federal law known as the Solomon Amendment, which required that colleges and universities allow the military full access to recruiting on campus. Any university excluding military recruiters from campus faced a loss of federal funding, even if only one component of the university flouted the law. Because of the military’s “don’t ask, don’t tell” policy on sexual orientation, a number of law schools objected to the access requirement, arguing that the requirement violated the schools’ own anti-discrimination policies. A coalition of law schools sued the federal government, arguing that having to choose between violating their nondiscrimination policies and losing millions of dollars of federal funding violated their First Amendment rights to academic freedom, free speech, and freedom of association. The Supreme Court decided that the law schools must permit the military to recruit on campus. Reasoning that law schools still had a number of other ways to publicize their objections to the military’s policies, including signs and protests, the Court concluded that “the Solomon Amendment neither limits what law schools may say nor requires them to say anything.”

|  |
| --- |
|  |

### Zimmerman

#### Black activism and racial justice requires campus free speech

**Zimmerman:** Zimmerman, Jonathan [Contributor, The Chronicle of Higher Education] “Racism Was Served by Silence. Justice Requires Free Speech for All.” The Chronicle for Higher Education. December 2016. RP

In 1986, the Senate Judiciary Committee turned down Jeff Sessions for a federal judgeship after reports surfaced that he had called the NAACP "un-American" and "Communist-inspired." **That decision is back in the news now that President-elect Donald Trump has nominated Sessions to be U.S. attorney general. His remark recalls the long history of racist hostility against the NAACP, which was harassed and persecuted across the South. Law-enforcement officials spied on its members, and at least three states — including Sessions’s native Alabama — prohibited the group from organizing within their borders. But Sessions’s comment should also make us look anew at campaigns to restrict speech on campus, which have been stepped up since Trump’s victory. A few days after the election, for example, students at my own institution asked for an "anonymous system" for reporting faculty members who made people of color feel "unsafe."** Who will collect this information, and how will they know if it’s credible? What will happen to the professors it cites? And how long will it take before white students complain that faculty of color have made them feel unsafe? Actually, it’s already happened. **In 2013, three white students at Minneapolis Community and Technical College said an African-American professor had made them feel uncomfortable by teaching them about structural racism. The college later reprimanded her for creating a "hostile learning environment." When Americans restrict speech, in fact, it’s usually minorities who lose out. That’s why just about every great fighter for racial equality in our history was also a warrior for free speech. Start with Frederick Douglass, who railed against efforts to silence his fellow abolitionists. Southern states outlawed the publication of antislavery tracts and even their delivery by mail. In Congress, meanwhile, Southern representatives and their Northern allies pushed through a "gag rule" that automatically tabled antislavery petitions.** "To chain the slave, these parties have said we must fetter the free!" Douglass told an 1852 audience in Ithaca, N.Y. "To make tyranny safe, we must endanger the liberties of the nation, by destroying the palladium of all liberty and progress — the freedom of speech." Eight years later, after a mob broke up an antislavery meeting in Boston’s Music Hall, Douglass returned to the same location to deliver his most famous testament to free speech. **Boston had been the fount of the American Revolution, which established freedom of speech as "the great moral renovator of society and government," he noted**. If Americans turned their backs on this tradition, he warned, they would also close themselves off to collective growth and improvement. "**To suppress free speech is a double wrong. It violates the rights of the hearer as well as those of the speaker," Douglass thundered. "It is just as criminal to rob a man of his right to speak and hear as it would be to rob him of his money." 1n 1905, when W.E.B. Du Bois and 28 others met at Niagara Falls, Ontario — because hotels on the American side wouldn’t serve blacks — they demanded not just equal access to public facilities and the ballot box but also freedom of speech. And when Du Bois helped launch the NAACP, four years after that, he insisted that African- Americans could never gain civil rights so long as they were prevented from speaking their minds**. After World War II, Du Bois was indicted for failing to register as a member of an antinuclear organization that the government deemed "subversive." Although he was acquitted, he continued to campaign for the freedom of others who were persecuted or muzzled during the Cold War. "It is clear still today that freedom of speech and of thinking can be attacked in the United States without the intellectual and moral leaders of this land raising a hand or saying a word in protest or defense," he wrote in 1952. "Than this fateful silence there is on earth no greater menace to present civilization." The NAACP was listed as a subversive organization in several states, too, which helps explain why Jeff Sessions thought it was Communist-inspired. Therefore members had to either keep their affiliation hidden — in violation of the law — or register with the government, which subjected them to still further harassment. And when students at South Carolina State College for Negroes protested the interrogation of NAACP members on campus, the students were investigated themselves. I**n short, if you didn’t have freedom of speech, you couldn’t counter any other injustice. That’s a lesson that some of today’s student activists — and some college administrators — seem to have forgotten**. Although courts have consistently found campus speech codes unconstitutional, hundreds of colleges continue to discipline students for saying the wrong thing. Faculty members, too, have come under fire. During the wave of protests that swept campuses last fall, students at Duke University called for the dismissal of professors who "perpetuate hate speech that threatens the safety of students of color." At Emory University, students demanded "repercussions or sanctions for racist actions performed by professors." Let me be clear: If students think a faculty member is racist, they have every right to say so. **But nobody has a right to limit someone else’s speech, via institutional prohibitions or star chambers or anything else. That’s precisely what white America tried to do to the NAACP and other African-Americans.** We insult their memories when we silence one another in the name of racial justice, which will never be served by the restriction of free speech.

### Avraham

#### Free speech doesn’t mean respectful liberal dialogue, but enables radical Marxist agendas.

**Avraham:** Avraham, Jonah ben [Contributor, Socialist Worker] “Looking closer at free speech.” *Socialist Worker.* March 2017. RP

IN HIS recent article "Marxism and democracy," Alan Maass weighs in on the ongoing debate on the left surrounding democracy, freedom of speech and our side's strategy in confronting the right wing: **When we challenge the right-- whether in protesting the policies and actions of a reactionary government, or in confronting individuals and groups which try to spread right-wing ideas and organize on the basis of them--we want it to be clear that our side is fighting for more democracy.** We can't pin any hopes to some shortcut of getting the "powers that be" to curb the right's influence or stop their actions. We need to defeat the right, politically and organizationally, by winning the majority of people to oppose them. This argument should, of course, be foundational to any socialist perspective on confronting the right. The state of the bourgeoisie will always, in every instance, use whatever tools it has at its disposal to undermine and push back revolutionary workers' movements. Because of this, when revolutionaries consider relating to the state's repressive capacities, they should always have as their end goal the restriction of those capacities. This Leninist theory of the state, however, can only do so much in answering the questions facing our movement today. While Maass' characterization of the Marxist tradition as a consistently democratic one is a necessary reminder when anarchist parties to this debate have, in pursuing Black Bloc tactics, shown themselves to be fundamentally undemocratic, we must be weary, as Marx argued in his 1844 essay "On the Jewish Question," of conflating the kind of democracy we seek with liberal frameworks overemphasizing negative protections of human rights. Specifically, a Marxist defense of the freedom of speech will look different from a liberal one, which concerns itself primarily with "respectful debate" and "dialogue." **After all, even the actions that Monique Dols points to in her excellent defense of mass mobilizations against the tactics of the Black Bloc defied liberal standards of respect for the right wing's freedom of speech**. In this period characterized by political polarization, it is important that our side not make the mistake of viewing the "powers that be" as our allies in fighting the right. In moments of crisis, capital is willing to turn toward fascism if it means the destruction of socialism. **But we must also not make the mistake, as many on the liberal left do, of fetishizing the call for freedom of speech for all as if our ideal political outcome is an ongoing, robust debate between socialists and fascists. Our ultimate goal is to smash fascism, along with capitalism, and build a new world in which racist, sexist and any number of other oppressive conclusions are unthinkable. Our freedom of speech is a freedom of speech that helps us accomplish that goal**. ---------------- **SO WHAT does a Marxist freedom of speech look like? For one, as Dols argues, "free speech...guarantees the right to speak without intervention from the state. It doesn't guarantee the right to speak unopposed or uncontested from below." It is this latter principle that should bring socialists to reject out of hand right-wing narratives about the silencing of free speech on college campuses.** Whether it's the absurd claim that Zionists must keep their Islamophobia to themselves at Columbia University in order to "survive" or the reactionary response to a letter by Yale faculty dissuading students from wearing racist Halloween costumes, the right (as well as segments of the liberal establishment) in recent years has aimed to appropriate progressive language of "inclusion" and "safe spaces" in order to attack anti-racist resistance. **We should unapologetically defend mass protests and social movements that aim to expose racists for what they are, regardless of their complaints of exclusion or failure to engage in "civil dialogue."** These arguments are ploys at shutting down our side's right to resist, and have nothing to do with an authentic defense of democracy and speech rights. The question remains, however, to what extent the freedom of speech that socialists protect is the freedom for the left to speak. One common answer is "No platform for fascists." Fascists, the argument goes, pose an existential threat to not only the left, but oppressed people, and must therefore be stopped at every turn from having any hearing. By this logic, any action that shuts down the right--be it an individual act of terrorism, the actions of a small clique of anarchists or the mobilization of a large mass of people--is a victory for the left. There is much to be sympathetic toward in this argument. The thought that "freedom of speech," a right meant to protect the ability of minorities to advocate for themselves even under an unfriendly government, could apply to neo-Nazis like Richard Spencer who openly call for ethnic cleansing is repulsive. Indeed, as socialists fighting to protect free speech, our task is not to defend hate speech as an act of protected political speech. While liberal organizations like the ACLU may find the most pressing task of the day to be the legal defense of the next KKK rally, we should speak against the right of genocidal speakers or political agents to have their message heard. Despite our rejection of right-wing speech, however, we must take Maass' argument seriously: **The state is not our ally, and any advocacy on our part of the state's right to intervene against the right will only be used against us when the left grows to the point of posing a substantial challenge to the state's power**. Likewise, the argument that we must silence the right by any means necessary fails to account for the fact that we simply don't have the ability to do so. To engage in adventurist tactics for the sake of shutting down a given speaker, event by event, would not only bring about disastrous repression by the state against our side, but would also turn public opinion squarely against us. The right would gain more of a hearing, not less, and the left would be an even weaker force incapable of fighting back. **Succeeding in silencing a right-wing speaker can be a huge victory for our side. In some cases, like at UC Berkley, it promises to protect vulnerable communities who might be directly endangered by a speaker. In others, it simply allows our side the chance to see our power exercised in a highly visible way and can serve as a lesson for broader and broader layers of people what we can do when we unite in our masses. But such an act can only be successful on our terms. The tactic of silencing a speaker or shutting down a rally can only be utilized effectively within a broader strategy of mobilizing the greatest number of people possible at every possible juncture**. We are strong enough to be successful and popular enough to sway public opinion only when we embrace the greatest possible degree of collective action.

### Stevens

#### Psychology proves that banning hate speech makes it more prevalent

**Stevens:** Stevens, Sean [Contributor, Heterodox Academy] “Free Speech is the Most Effective Antidote to Hate Speech.” Heterodox Academy. December 2016. RP

On December 6, Texas A&M University will play host to Richard Spencer, a leader of the “alt-right” movement, and an open white supremacist. **Many will likely view Spencer’s presence at Texas A & M as confirmation that Donald Trump’s election to the presidency has allowed fringe political views to enter mainstream discussion.** When Spencer, or someone like him, makes a statement like “America was, until this last generation, a white country, designed for ourselves and our posterity. It is our creation and our inheritance, and it belongs to us,” many people may question why we should remain committed to the First Amendment. This post argues why members of an academic community need to remain steadfast in that commitment, even when faced with a figure like Richard Spencer. When hardcore racists and xenophobes remain consigned to obscure message boards and poorly attended events, it’s fairly easy to believe in freedom of speech and expression. But when organized hatred arrives on campus, such defenses can be perceived as granting unacceptable cover to viewpoints that are widely considered despicable and immoral. To many, such viewpoints don’t deserve the protection of the First Amendment. **Unfortunately, the impulse to start limiting speech – either with on- the-books campus speech codes or simply through stepped-up social enforcement of speech taboos – is likely to pour gasoline on the fire and make the problem worse. Research suggests that restrictions perceived to threaten or possibly eliminate behavioral freedoms may trigger “psychological reactance”, and increase one’s desire to engage in the restricted behavior. For instance, Worchel and colleagues (1975) assessed desire to hear censored material among students at the University of North Carolina. The experimenter informed participants that they would soon be hearing a tape recording of a speech and that the study was interested in how personal characteristics impact a speaker’s ability to get their message across. Some participants were then informed that because a student group (either the YM-YWCA or the John Birch Society) on campus was opposed to the content of the speech, the experimenter would not be able to play the taped recording. Consistent with reactance theory, participants who were informed they could not hear the content of the speech, reported a stronger desire to do so. This effect occurred regardless of whether the student group was viewed positively (YM-YWCA) or negatively (the John Birch Society). More recently, Silvia (2005) investigated if interpersonal similarity could override the experience of psychological reactance. In two separate studies, psychological reactance occurred when people felt their attitudinal freedom was threatened when interpersonal similarity was low, but not when interpersonal similarity was high**. More broadly, while ingroup favoritism may depend more on positive affect towards the ingroup, perceived discrimination by an outgroup increases ingroup identification, and can increase anger, hostility and aggression towards outgroups. If we incorporate these findings into our thinking about whether to censor a speaker, the following chain of events does not seem to be an implausible reaction: 1. **Censoring a speaker may increase some people’s desire to hear that speaker’s message, particularly those who perceive the speaker as similar to them in some way. 2. Censoring a speaker may be perceived as threatening to people who perceive the speaker as similar to them**. 3. The perception of threat is likely to increase identification with a salient ingroup. 4. Increased ingroup identification in response to threat may result in anger, hostility, and aggression towards outgroups. **In other words, censoring and disinviting a speaker such as Richard Spencer may actually make him and his views more popular. Instead of acting as an antidote to hatred, censorship may pour gasoline onto an already simmering fire**. Calls to disinvite, and thus censor, Spencer may produce the unintended consequence of promoting his vile, racist views. **People like Spencer revel in the power of their words to arouse emotions and strong reactions in their opponents. They interpret attempts to silence and exile their voices as fear of the truth they possess.** The alt-right movement confidently hoists the pirate flag of rebellion, but it can only claim to be rebellious if it can point to the “powers that be” trying to shut them down. Meeting hate speech with more speech is hard. It is extremely difficult to engage with people who hold beliefs that call another’s humanity into question. But engagement may be the most effective tool we have. **Speech codes and disinvitations may feel good in the moment, but they represent an easy way out. Often, what has been made taboo and socially undesirable comes back stronger than before.**

#### Free speech is empowering – it can be cathartic for the oppressed to engage in bottom up mobilization

**Stevens:** Stevens, Sean [Contributor, Heterodox Academy] “Free Speech is the Most Effective Antidote to Hate Speech.” Heterodox Academy. December 2016. RP

**We believe a stronger antidote is needed, and that antidote is more speech. To challenge Spencer, this speech can take different forms; and on December 6, some may find it cathartic, empowering and/or exciting to do so.** However, we urge that opposition be constructive, not disruptive. **Donating to counter causes, such as the Anti-Defamation League, the Simon Wiesenthal Center, and the National Organization for Advancement of Colored People’s legal defense fund, that are actively combatting people like Spencer and his ideas is one useful tactic. Indeed, shortly after the announcement that Spencer would be speaking on campus, the psychology department at Texas A & M launched a fundraising campaign to protest Spencer and his racism. Joining this protest and funding groups opposed to Spencer is a form of speech and action that makes Spencer weaker, not strong. Same thing for attending his talk and rebutting his speech during the question and answer period. Speech can be deployed as a scalpel, able to cut through vitriol, rhetoric and mendacity to help counter speech that advocates for harmful ideas and outcomes.**

### Bon

#### Free speech is key to movements for public spaces, resisting the neoliberal privatization on campus.

**Bon:** Bon, Dorian [Contributor, Socialist Worker] “Who's behind the free speech crisis on campus?” *Socialist Workers.* April 2017. RP

-Student activism key – takes out agent CPs

-Need most free speech and demand for ourselves – answers PIC

**THE TRANSFORMATION of the university into a neoliberal regime has intensified the crisis of free speech on campus. Contingent professors are justifiably afraid to express themselves openly with very little job security and power to defend themselves from their employers.** Students, saddled with debt, cannot afford to risk discipline or suspension when their hopes of financial security depend on getting their diplomas and finding employment. To top it off, campuses are now dominated by an army of administrators policing student and faculty activity. This frightening state of affairs makes the effort by contingent faculty and graduate students to form labor unions an important struggle for adherents of free speech to support. The greater job security and control that unionization would bring to students, faculty and staff would go a long away toward protecting their right to free expression. **But beyond this, the combination of repression nationwide against students and the decades-long rollback of the gains of past struggles should compel us to make the fight for free speech a centerpiece of our activism on campus today. To do so requires an understanding that universal free speech and expression is a fundamental right--one that we have to expand to be able to pursue any of the particular aims we want to fight for on campus. The more we demand and win the right for everyone on campus--regardless of their politics--to speak, publish, organize, assemble and protest as they wish, the more power and space we build for our side to push for our own politics of social justice and liberation. In addition to opposing campus administrations and regulations that seek to curtail speech, this will also require winning arguments with others on the left who sometimes buy into the notion that protesting injustice requires limiting free speech at an institutional level (at least the speech of those on the right)--and call for actions like banning racists and sexists from speaking on campus, for example. But endorsing limits on free speech destroys the left's capacity to fight--because such regulations are invariably used against our side. Instead, building the left and advancing our causes necessitates a dramatic *expansion* of civil liberties, including speech--and organizing to mobilize to confront and protest racists, sexists and others on the right in an open and confident manner, with the largest forces possible. During the first student movement in the U.S. in the 1930s, socialist students actually led the struggle for free speech on campus, and became so associated with this principle that the general student body drew a conscious connection between socialism and free expression. The struggle for the "open forum" on UC campuses in 1934 bears this out**. As Robert Cohen points out in his book *When the Old Left Was Young*, communist students with the National Student League led the fight to allow freedom of assembly--known as the "open forum"--for all students anywhere and anytime on UC campuses. UCLA Provost Ernest Moore accused any student who advocated for the open forum of being a communist. At a mass rally on UCLA's campus, one student responding to Moore quipped, "If you are for free speech, you are a communist too." **Student activists in today's age of "free-speech zones" and administrative repression need to take up this strategy. We should aim to make our struggles synonymous with the demand for the right to full free expression and assembly on campus--and beyond. Winning that right will require struggle--and we can't rely on anyone to build that but ourselves.**

#### Speech restrictions function to quell radicalism – the Aff is key to take back the academy.

**Bon:** Bon, Dorian [Contributor, Socialist Worker] “Who's behind the free speech crisis on campus?” *Socialist Workers.* April 2017. RP

**IT'S WORTH assessing how the restrictions of speech on campus got to be this bad to begin with.** Although it may seem surprising, the right of students to freely express themselves is actually a fairly recent phenomenon in the United States. **Before the radical student movement of the 1930s, only a small minority of university administrators held the view that students should be allowed to put forward their independent positions on campus**. This hostility to student speech was summed up by Columbia University President Nicholas Murray Butler in 1935, when he argued, "The phrase academic freedom has no meaning whatsoever. That phrase relates solely to freedom of thought and inquiry and freedom of teaching on the part of accomplished scholars." **Students struck, 2,000-strong, for free speech on Columbia's campus in 1932. Mass mobilizations and strikes against war and poverty involving over half of American college students, and led by Communist and socialist organizers, won the first concessions for the free speech rights of students during the Great Depression. After a period of retreat in the 1940s and '50s, students once again sprang into action during the mass social movements against racism and war that raged throughout the 1960s until the mid-1970s. During this time, millions struck, protested and organized on campuses around the country. The student upsurge of the 1960s, animated by the broader radicalization in U.S. society around it, began with the free speech struggle at UC-Berkeley, much as the 1930s movement started with a free speech fight at Columbia and City College in New York. This is not a coincidence.** The fight for free speech preconditions all other fights, because without the fundamental right to self-expression and organization for students, any independent student initiative is impossible**. Since the end of the 1970s, university leaders have coordinated an offensive to restrict student speech once again. The not-so-distant memory of the disruptive mass student movement compels academic bosses and administrators to use every mechanism at their disposal to prevent and neutralize student dissent. This led directly to a litany of new rules, restrictions and codes of conduct--like "free-speech zones" and administrative approval for student literature--which effectively curtails student organizing and conditions it to the whims of administrators.**

### Haiman

#### There’s nothing intrinsic about speech that makes it harmful

**Haiman:** Haiman, Franklyn [Franklyn Haiman is John Evans Professor Emeritus of Communications Studies at Northwestern University. He is the author of Speech and Law in a Free Society and "Speech Acts" and the First Amendment.] “The Remedy is More Speech.” Summer 1991. RP

The answers to these seemingly compelling arguments are many, and even more compelling. **The view of racist slurs as equivalent to physical blows ignores some crucial differences. A physical blow will hurt, no matter what the victim's state of mind; a verbal attack will hurt only if comprehended. If uttered in a foreign language, or in euphemisms equally unfamiliar, it will do no damage, for its meaning will not have been understood. It is the meaning that hurts, which is another way of saying that not only has an idea been communicated, but a very powerful and hateful one at that. If no meaningful idea were involved, there would be no injury.**

#### Limits on speech never catch covert racists, make the problem go underground, and cause backlash – open discussion is a better solution than just hiding the hate.

**Haiman:** Haiman, Franklyn [Franklyn Haiman is John Evans Professor Emeritus of Communications Studies at Northwestern University. He is the author of Speech and Law in a Free Society and "Speech Acts" and the First Amendment.] “The Remedy is More Speech.” Summer 1991. RP

The answers to these seemingly compelling arguments are many, and even more compelling. The view of racist slurs as equivalent to physical blows ignores some crucial differences. A physical blow will hurt, no matter what the victim's state of mind; a verbal attack will hurt only if comprehended. If uttered in a foreign language, or in euphemisms equally unfamiliar, it will do no damage, for its meaning will not have been understood. It is the meaning that hurts, which is another way of saying that not only has an idea been communicated, but a very powerful and hateful one at that. If no meaningful idea were involved, there would be no injury. **It is internally contradictory to say that racist speech contains no ideas and has no value because it is false. A statement with no ideas cannot be false. Hitler's claims that the Aryans were a superior race and that an international Jewish conspiracy was controlling the world were harmful because they were false ideas, not because they lacked ideational content. When students pass out leaflets saying "Niggers go home," or chant that "Hitler had the right idea" they are uttering opinions that are hateful precisely because of the ideas they express**. We are dealing here with bad ideas, not physical blows or the absence of ideas. For that problem John Stuart Mill had the right answer long ago in his famous essay "On Liberty." He said that we must allow for the expression of bad ideas -- whether opinions or alleged statements of fact -- because they may contain some grain of truth that corrects the conventional wisdom or, lacking that, provide a challenge to accepted beliefs, without which those beliefs in the long run become mere prejudices. As Supreme Court Justice Louis Brandeis advised, in his famous Whitney v. California opinion in 1927, "If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence**." A proponent of restricting racist speech might concede that it does contain ideas and that there might even be some slight value in the expression of those ideas, but that on balance the harm they do still warrants their suppression. Yet a closer look at those harms and the competing interests they involve shows why this is not so.** It is clear that racist speech in some volatile situations may incite violence against its targets or provoke its targets to react violently. But that is not unique to racist speech. We have more generic, constitutionally permissible, prohibitions against direct incitement or provocation to immediate violence in contexts where violence is likely to occur. These restrictions, covering incitements of any sort, are adequate to deal with the relatively infrequent incidents of violence resulting from racist speech. If anything, some of these prohibitions, such as the so-called "fighting words" doctrine that has been approved by the Supreme Court and adopted by the University of California system as its standard for restricting speech, may be too extensive, since they allow for the possibility of a "heckler's veto." Despised or unpopular speech that does not seek to start a fight may be suppressed because the audience threatens reactive violence. Under such a regime, any speech could be stopped by displeased listeners who threaten sufficient turmoil. What is more, the "fighting words" standard offers no protection to those targets of hate speech who are too weak or outnumbered to even consider beginning a fight. A second harm that racist speech is alleged to cause, at least in some circumstances, is the physical intimidation of its targets. Again, this problem is not unique to racist speech, and generic, constitutionally permissible, remedies are available. The common law of assault punishes verbal attacks of any sort that place an individual in immediate apprehension of physical harm. It is illegal to send threats of physical injury through the U.S. mail. Federal civil rights law makes it a crime for two or more persons to "conspire to injure, oppress, threaten, or intimidate any citizens in the free exercise or enjoyment of any right or privilege secured to him by the Constitution." There are also remedies specific to racial and sexual harassment in the workplace. Employees who have been subjected to patterns of verbal abuse by supervisors and fellow employees have won court judgments against the employer. One such case occurred in the State of Washington, where the Crown Zellerbach Company was found liable to a Mexican-American employee who, according to the state supreme court, had been "subjected to continuous humiliation and embarrassment by reason of racial jabs, slurs and comments ... by agents and employees of the defendant corporation." The same logic could well apply to a classroom situation in which a student is subjected to a similar pattern of verbal derogation by the teacher and other students. We must be cautious about such remedies, however, if and when they begin to spill over to circumstances where the instances of racist or sexist utterance are rare rather than part of a persistent pattern, and where there is no authority relationship present as between boss and employee or teacher and student. Key elements of the Washington Supreme Court decision in the Crown Zellerbach case, for example, were its finding that the victim was in a situation where he had to "remain in physical proximity" to people who were "continually" making racial slurs, and that the participation in this activity by a person in a position of authority over the target created the apprehension of discriminatory *treatment* that might well go beyond mere words. **We must also be wary of restrictions, such as those being adopted by some universities, that punish racist or sexist speech on the basis of vague criteria such as the creation of an "unpleasant" or "hostile" environment, rather than specific and demonstrable interference with a targeted individual's ability to function**. Not that unpleasantness or discomfort resulting from the speech of others is benign. It is not a harm, however, from which people in a free, and often disputatious, society can be immunized. The supreme court of the State of New York recently made that point clear, in striking down as overbroad the state's harassment statute, which had been invoked against a nineteen-year old woman who had called a retarded neighbor woman a "bitch" and her retarded son a "dog" as they passed by her door. Absent a clear and present danger of material consequences, the court believed that such verbal abuse must be tolerated. That is a standard which universities, supposedly bastions of free inquiry, would do well to embrace. To do otherwise would be to accept the proposition, offered as perhaps their most forceful argument by the advocates of restricting racist speech, that the emotional distress suffered by the victims of such communication is, in and of itself, a sufficient harm to justify an exception to First Amendment protections. That real emotional pain may be experienced by the targets of racially, religiously, or sexually abusive speech is undeniable, particularly when they feel their group to be vulnerable to oppression by those actually or potentially in power. But emotional pain is a highly subjective, individualized experience that can result from a wide range of stimuli, including not only explicit and deliberate verbal attacks but unintended slights and even vivid historical or fictional accounts of traumatic events. Emotional pain can also be confounded and confused with other psychological states. Lawsuits for causing mental anguish were filed, for example, against the ABC network for its broadcast portrayal of the impact of a nuclear war, "The Day After," though what the plaintiffs had probably felt was less mental anguish than intense political disagreement. And in a suit for emotional distress arising out of the Skokie incident, a holocaust survivor and leader of the opposition to the Nazi march, who testified that the sight of marching Nazis would evoke intolerably painful memories of the execution of his parents, was found to have gone willingly to monitor other demonstrations by the neo-Nazis in the Chicago area. Apparently his opposition to their Skokie march was motivated more by anger than by pain. This is not to denigrate the anger that he felt but to suggest that it is not the same as emotional hurt. Nor is emotional hurt the same for one black person in the face of verbal slurs and epithets as it is for another, nor of necessarily greater magnitude for a black than for a Jew, for a Jew than for a gay, or for a person with physical handicaps. It is for this reason that the U.S. Supreme Court rejected Jerry Falwell's claim against *Hustler* magazine for the intentional infliction of emotional distress, holding that in the area of political and social discourse any effort to determine the seriousness of alleged emotional harms has such "an inherent subjectiveness about it" that our courts should not engage in the process. **Even if one were persuaded that banning racist speech is desirable to reduce harm, numerous practical consequences should give pause. Placing limitations on the verbal expression of group hatred does not make those attitudes disappear. More likely they will go underground to fester, and perhaps later erupt in more violent form. In the absence of their overt expression, society may grow complacent, thinking it has solved a problem that actually persists. The hidden enemy is more dangerous than one that is seen. Those who are clever enough, instead of going underground, will express their hatred in more indirect and sophisticated ways, evading the prohibitions of the law while increasing the persuasiveness of their racist message by phrasing it in less repugnant terms. This is precisely what happened in Great Britain with a racist journal after passage of the Racial Relations Act of 1965. The law made it an offense to publish or distribute any matter that is "threatening, abusive, or insulting" aimed at fomenting "hatred against any section of the public in Great Britain distinguished by color, race, ethnic or national origins." The journal cleaned up its language and increased its circulation. Prohibitions also turn censored material into "forbidden fruit" and the advocates of racism into martyrs.** If speech or writing is banned, many will suppose there must be something important that those in power are afraid of. Curiosity, if nothing else, will lead some to find out for themselves what is being withheld or regulated. How many people who would not otherwise have done so went to see the movie 'The Last Temptation of Christ" or the Mapplethorpe art exhibit, because of the efforts made to suppress them? In France, National Front leader Jean-Marie Le Pen's success in garnering up to fifteen percent of the vote in recent elections may well have been due in part to the role of martyr he has played to the hilt as a result of the various legal actions brought against him for "inciting racial hatred." **Prohibitions on group libel may also perpetuate a sense of helplessness among the targets of racist speech. Instead of learning to defend themselves verbally, people who come to regard themselves as victims may depend upon authorities to protect them from verbal abuse.** Children who respond to a schoolyard taunt by chanting, "Sticks and stones may hurt my bones, but names will never hurt me" may not be truthfully revealing all their inner feelings. But they are at least expressing a bravado that may be useful in deterring further abuse**. A final practical shortcoming of restrictions on racially, religiously, or sexually derogatory speech is that no matter how broadly they sweep in defining what is prohibited, they cannot, without entirely shredding the First Amendment, reach some of the insidious forms of racism and sexism that have been built into our very language. Are we going to outlaw such expressions as "black sheep," "blacklist," "blackball," "blackening someone's reputation," and "as different as black and white"?** Are we going to decree that God may no longer be referred to as "He"? And make no mistake about it: it is an insidious influence on our ways of thinking for black to be so often associated with the bad and for "he" to serve as our generic pronoun. **To oppose restrictions on group libel is not to be insensitive to the problems of prejudicial attitudes and discriminatory conduct. On the contrary, it is to refocus our attention and energies away from superficial and counterproductive remedies to grapple with the underlying causes of group hatreds. Insofar as the verbal expression of those hatreds is concerned, our institutions of higher education, more than any other institutions in our society, have a responsibility and the resources to act on the advice of Justice Brandeis and answer evil speech with more and better speech. They should be sponsoring activities and setting examples, aimed at educating students for living harmoniously in a pluralistic society. If intergroup understanding is to be developed, our college and university administrators, faculty, and student leaders must play an active and vocal role in helping to make it happen. But the roots of group hatreds stretch far beyond the reach of our educational institutions. They have entangled the world forever and plague us today, from Northern Ireland to the Middle East, from Ethiopia to South Africa. They are interwoven with problems of economic wealth and poverty, of political power and powerlessness, of psychological insecurity and fear. They will not be solved by writing laws and rules against racist speech.**

### McElroy

#### A hands off approach to the problem on campuses lets students find their own solutions to racism – psychology confirms this works

**McElroy:** McElroy, Wendy [Contributor, The Daily Bell] “Libertarianism and Racism.” *The Daily Bell.* September 2014. RP

Three accusations about racism are being hurled at libertarianism. As libertarianism ascends in political prominence, the accusations will get louder. 1. Libertarianism cannot eliminate racism from society. This is true. **But the demand for a racist- free society is a totally unreasonable demand and cannot be used as a gauge of failure. Racism is an idea, and no political system can remove a thought from society or from man's mind. The most common (and non-libertarian) approach is to punish or confine people who come to the 'wrong' conclusions. That is, to impose thought control. Censorship usually backfires, however, because ideas are like springs; the more force presses down on them, the stronger they become. By contrast, freedom of speech exposes the ugliness of racism whenever a racist speaks. Freedom of speech offers the only effective 'cure' for a bad idea: namely, a good one.** Those who would ban thoughts through government or other force reveal an utter lack of better or good ideas. In fact, they display an intolerance for ideas that is as deep as and more harmful than the intolerance of those they attack for being 'wrong.' Thomas I. Emerson, a 20th century scholar and advocate of absolute free speech, explained: "It is frequently said that speech that is intentionally provocative and therefore invites physical retaliation can be punished or suppressed. Yet, plainly no such general proposition can be sustained. Quite the contrary.... **The provocative nature of the communication does not make it any the less expression. Indeed, the whole theory of free expression contemplates that expression will in many circumstances be provocative and arouse hostility.** The audience, just as the speaker, has an obligation to maintain physical restraint." 2. Libertarianism cannot eliminate discrimination on the basis of race. This is also true. But the only way to do so is to strip people of control over their own bodies and property. **People who are free to associate with anyone they choose are also free not to associate.** Libertarianism demands only that the association is peaceful and that it violates no individual rights. This means a baker can refuse to sell a wedding cake to gays, and gays can boycott him or refuse to provide goods in return. (Libertarian remedies for such discrimination follow shortly.) Chapter VIII of Omnipotent Government by Ludwig von Mises is entitled "Anti-semitism and Racism." Mises wrote of the oppression of Jews in Nazi Germany from which he fled but the message is identical. He defended peaceful and private discrimination by focusing not on the right of businessmen but on the right of consumers; he referred to free-market discrimination as "consumer's sovereignty." The corollary: businesses had the same right to refuse to sell as consumers had to refuse to purchase. Mises argued: "In an unhampered market society there is no legal discrimination against anybody.... The consumer is free to discriminate, provided that he is ready to pay the cost. A Czech or a Pole may prefer to buy at higher cost in a shop owned by a Slav instead of buying cheaper and better in a shop owned by a German. An anti-Semite may forego being cured of an ugly disease by the employment of the 'Jewish' drug Salvarsan and have recourse to a less efficacious remedy. In this arbitrary power consists what economists call consumer's sover - eignty." Libertarian Strategies. If libertarians refuse to use force against 'wrong' thoughts or 'wrong' acts that are peaceful, what can they do? The question is revealing. **Anyone whose entering assumption is that government action is necessary for social change believes in controlling ideas and attitudes through violence. Using force has the illusory advantage of a quick fix but it will never create a free, cooperative or stable society.** Those who trade liberty for an appearance of non-racism are like those who trade liberty for faux security. Saying "there ought to be a solution" is entirely different from saying "there ought to be a law." **The only solution to racism is by changing the hearts and minds of those individuals who express it.** Volume two of Gene Sharp's three-volume The Politics of Nonviolent Action offers 198 non- violent strategies to achieve genuine change. (Sharp himself admits that the tactics are a only partial listing.) The strategies are organized into three categories: nonviolent protest and persuasion, noncooperation and nonviolent intervention. The volumes are replete with historical examples of how they have succeeded. 3. Libertarians are racists. Libertarianism has been labeled "racist" by critics, including by some libertarians from the 'left.' Although a racist libertarian who acts peacefully toward others is not a contradiction in terms, the set of ideas that constitute libertarianism are unlikely to produce or to attract a racist. That set of ideas includes: a stress on individual rights that are universally held by all human beings; a celebration of cooperative society; a demand that the law protect the person and property of everyone equally; a commitment to methodological individualism rather than collectivism... Just as the framework of communism necessitates collective thinking, the framework of libertarianism radically discourages it. Since racism is a form of collective thought, it is naturally alien to libertarians who analyze society first and foremost in terms of individuals. Other aspects of libertarianism also discourage racism. Two of them are its stress on free commerce and on private property. One of the most entertaining illustrations of how free commerce creates cooperation between diverse people was offered by the French Enlightenment giant François Marie Arouet de Voltaire in his Letters Concerning the English Nation. In them, Voltaire tried to explain why society in England was so much freer and more tolerant than in France. A key reason was the freedom of English commerce, he concluded. Commerce created an arena in which diverse people interacted solely for their own benefit, and self-interest provided a strong incentive for each one to ignore the other's religion or skin color. Shopkeepers and customers met over a sale and a purchase, and it was to the seller's advantage to be pleasant in order to secure a repeat customer. To Voltaire, the relatively impersonal nature of the trade was a benefit because the participants did not deal with their personal prejudices but with their own self-interest, which outranked bias. Ironically, the impersonal nature of commerce was a humanizing force in society.

### ISO

#### Free speech on campus is key to oppose hidden racism and microaggressions – it lets students condemn bad ideas on their own terms

**The ISO:** The International Socialist Organization [Group that that organizes movements regarding socialism and activism] “Free Speech, Racism, and Our Right to Protest.” International Socialist Organization. March 2017. RP

**Students who protested, and ended up shutting down, a planned speech by Charles Murray at Middlebury College have come under heavy criticism. Multiple pieces in the New York Times have described the students as an “angry mob” and evidence of “emotional coddling” and “intellectual impoverishment**”. Professors and intellectuals across the political spectrum, including prominent liberal thinkers at our own university, have condemned them for failing to respect free speech and a robust exchange of ideas.This debate has obscured several important truths. **Free speech should be vigorously defended on campuses, and university administrations should have no part in banning speakers or dictating who departments and student groups can and cannot invite. It’s worth saying that the left has usually been at the forefront of fighting for and defending this right to free speech. But this right must also extend to students who choose to protest right-wing speakers; and when the speaker in question has built his career peddling the idea that Blacks are genetically inferior to whites on the basis of junk science that has been thoroughly discredited, students have not only a right, but a responsibility, to expose his ideas as nothing more than an illegitimate cover for white nationalism**. Likewise, they also have a right to demand that those in power do not lend legitimacy to Murray’s racism – as happened when Middlebury’s President agreed to introduce him and a liberal professor agreed to moderate in a forum that provided no equal space for students to contest his ideas.This debate has now come to Columbia, as Charles Murray has been invited by the American Enterprise Institute and Columbia University Campus Republicans, and received support from the Columbia Political Union. The ISO, along with other student activists, will be publishing a letter in The Spectator demanding that those opposed to Murray’s racism be allowed to debate him and force him to defend his ideas. We also plan to protest him when he speaks and to expose his racism. Briefly before 8:00pm, unless our demand for a chance to contest Murray’s disgusting racism is met, ISO members in attendance will be walking out of Murray’s speech and hosting our own meeting discussing Murray’s reactionary history, the role he has played in providing ideological justification for mass incarceration and attacks on welfare and affirmative action, and why it is so important for him to be exposed and opposed right now. **We also hope that this can provide a space to discuss the most effective ways for fighting racism and the growth of the right – on campus and off – and why such a fight has to also be a fight with the fullest commitment to free speech and democratic rights.**

### Chatterjee and Maira

#### Privatization of the university functions as a means to militarize the academy, ceding the space to authoritarian elites.

**Chatterjee et al:** Chatterjee, Piya [Dorothy Cruickshank Backstrand Chair of Gender and Women’s Studies Chair of the Feminist, Gender, and Sexuality Studies Department, Scripps College] and Sunaina Maira [Professor of Asian American Studies, UC Davis]. *The Imperial University: Academic Repression and Scholarly Dissent*. University of Minnesota Press, 2014. RP

**In a post-9/11 world, the U.S. university has become a particularly charged site for debates about nationalism, patriotism, citizenship, and democracy**. **The “crisis” of academic freedom emerges from events such as the ones we witnessed in Riverside and Davis but also in many other campuses where administrative policing flexes its muscles along with the batons, chemical weapons, and riot gear of police and SWAT teams and where containment and censorship of political critique is enacted through the collusion of the university, partisan o -campus groups and networks, and the state**. A er 9/11, we have witnessed a calamitously repressive series of well-coordinated attacks against scholars who have dared to challenge the national consen- sus on U.S. wars and overseas occupations. **Yet there has been stunningly little scholarly attention paid to this policing of knowledge, especially against academics who have dared to challenge the national consensus on U.S. wars and overseas occupations and U.S. foreign policy in the Middle East. Simultaneously, the growing privatization of the public university, as in California, has demonstrated the ways in which the gates of access to public higher education are increasingly closed and the more subtle ways in which dissident scholarly and pedagogical work (and their institutional locations) is delegitimized and—in particularly telling instances—censored at both public and private institution**s. e 9/11 attacks and the crises of late capital- ism in the global North have intensi ed the crisis of repression in the United States and also the ongoing restructuring of the academy—as well as resis- tance to that process—here as well as in the global South. **What does it mean, then, to challenge the collusion of the university with militarism and occupation, the privatization of higher education, and economies of knowledge from within the U.S. university? When scholars and students who openly connect U.S. state formation to imperialism, war, and racial violence are disciplined, then how are we to understand freedom, aca- demic and otherwise?** How is post-9/11 policing and surveillance linked to racial, gendered, and class practices in the neoliberal academy? Has the War on Terror simply deepened a much longer historical pattern of wartime cen- sorship and monitoring of intellectual work or is this something new? This edited volume o ers reports from the trenches of a war on scholarly dissent that has raged for two or three decades now and has intensi ed since 9/11, analyzed by some of the very scholars who have been targeted or have directly engaged in these battles. e stakes here are high. ese dissenting scholars and the knowledges they produce are constructed by right-wing critics as a threat to U.S. power and global hegemony, as has been the case in earlier moments in U.S. history, particularly during the Cold War. Much discussion of incidents where academics have been denied tenure or publicly attacked for their critique of U.S. foreign or domestic policies, as in earlier moments, has centered on the important question of academic freedom. However, the chapters in this book break new ground by demonstrating that what is really at work in these attacks are the logics of racism, warfare, and nationalism that undergird U.S. imperialism and also the architecture of the U.S. academy. Our argument here is that these logics shape a systemic struc- ture of repression of academic knowledge that counters the imperial, nation- building project. The premise of this book is that the U.S. academy is an “imperial uni- versity.” As in all imperial and colonial nations, intellectuals and scholarship play an important role—directly or indirectly, willingly or unwittingly—in legitimizing American exceptionalism and rationalizing U.S. expansionism and repression, domestically and globally. e title of this book, then, is not a rhetorical ourish but o ers a concept that is grounded in the particular imperial formation of the United States, one that is in many ways ambigu- ous and shape-shi ing.3 It is important to note that U.S. imperialism is char- acterized by deterritorialized, exible, and covert practices of subjugation and violence and as such does not resemble historical forms of European colonialism that depended on territorial colonialism.4 As a settler-colonial nation, it has over time developed various strategies of control that include proxy wars, secret interventions, and client regimes aimed at maintaining its political, economic, and military dominance around the globe, as well as cul- tural interventions and “so power.” e chapters here help to illuminate and historicize the role of the U.S. university in legitimizing notions of Manifest Destiny and foundational mythologies of settler colonialism and exceptional democracy as well as the attempts by scholars and students to challenge and subvert them.

#### Academic freedom is good?

**Chatterjee et al:** Chatterjee, Piya [Dorothy Cruickshank Backstrand Chair of Gender and Women’s Studies Chair of the Feminist, Gender, and Sexuality Studies Department, Scripps College] and Sunaina Maira [Professor of Asian American Studies, UC Davis]. *The Imperial University: Academic Repression and Scholarly Dissent*. University of Minnesota Press, 2014. RP

**The holy grail of academic freedom, defined within the liberal param- eters critiqued by Prashad, has been institutionalized as a limited and prob- lematic horizon for progressive academic mobilization**. Academic freedom maintains the illusion of an autonomous university space in a militarized and corporate society such as the United States and in a “surveillance soci- ety and post-Constitutional garrison state” that continues to be consolidated under Obama, as suggested by Dominguez and other authors. This does not mean giving up entirely on invoking academic freedom**, for it can be, and is, often strategically used as a minimal line of defense to introduce critical ideas and broaden public debates within the academy**. However, progres- sive campaigns organized around the principle of academic freedom o en run into a profound fault line in their mobilization, if not also organized around larger political principles. In our experience, campaigns focused on organizing in defense of scholars targeted since 9/11, especially those work- ing in Middle East and Palestine studies, o en end up struggling with these same contradictions if they attempt to cohere simply around “academic free- dom” rather than a more rigorous (progressive) political consensus, given how fractured the academic le is when it comes to Middle East politics and Israel-Palestine.

### Flynn

#### Critical empowerment requires addressing hidden forms of oppression – individuals calling out covert manifestations of oppression is a viable bottom-up political strategy

**Flynn:** Flynn, Molly [Contributor, Study Breaks] “COVERT RACISM: HOW TO SPOT IT AND STOP IT.” January 2017. RP

**If your white friend likes to remind you that they have a black friend after using offensive racial slurs, it’s a good sign that they are casually racist**. If they hate diversity conversations and say that racism doesn’t exist, they sound like the exact people who’ve prompted me to write this article. **These people, these covert racists, live among us. But rather than wear their racism on their swastika-cladded sleeves, they’re more discrete about it and attempt to disguise it. So, how do we unveil the bigots in sheep’s clothing?** Typically, it’s a lot easier to spot a covert racist than you might think. Recently, I was able to meet one of my own. I work in retail and I get to meet a plethora of beautiful people every single day. My job entails talking to people who a lot of times are the absolute worst, but I, like the coverts, have to disguise my true feelings when interacting with a jackass. And the worst type of jackass is the racist one. Last week, a lady and her two daughters came into my store. Like any other customer, I treated them with excitement and gratitude that they were stopping by. After a few minutes of shopping, my associate prepared a fitting room for this family. Right around the same time another manager in the store, Kayla, returned from break. She was working on reorganizing some things around the store and found her way to the fitting room. The lady had her door open and her two daughters were in the hallway. When Kayla entered the room, the lady quickly hushed her kids, shot a death glare at Kayla and told her daughters to quickly come back in while she slammed the door shut. This struck Kayla as very odd. This family had not treated any of the other staff in the same way but then again, Kayla was the only black associate they had interacted with. Before jumping to any conclusions, we decided to assume that maybe this mother was just startled that someone had entered the fitting room. But the attendant had been entering the fitting room frequently along with many other customers to whom she did not react as ostentatiously. Regardless, Kayla and I continued about our business and maintained an environment of acceptance for this family. However, Bigoted Brenda and her clan of two were not finished with their racist display. Whenever they completed their shopping and continued to the register, the cashier asked them who helped them. Shamelessly, she referred to my Mexican-American associate as the “not-American one.” What?? Did she really just call her the NOT American one? As she spoke those words, my mouth genuinely opened in a disbelieving gape. **This confirmed to me that her previous act had been conducted with the same level of ignorance and racism that it took to claim that because my associate had brown skin, she was not American. And during it all, she maintained a pretentious smile and was so condescendingly polite. These are a few tells of covert racism. But, there are many other ways someone can display their biases in a nonchalant and inconspicuous way and not all are fueled by hatred, just ignorance.** A few years ago, I was driving around with my aunt. As we were crossing through the parking lot, a family crossed the street in front of us. My aunt kindly said, “ That little black girl is so pretty.” This was a fairly innocent comment about the cutest little kid either of us had seen in a while, but why was race even mentioned? This was the only family in the parking lot a part from us and a racial indicator was completely irrelevant. I asked my aunt, “If she was a white girl, would you have mentioned her race?” This started a very engaging conversation between us about how we interact with races different than our own. As pure as the intention was to this comment, it still registers on the covert racism scale. But hey, not as high as people who pretend to be [colorblind](http://www.teenvogue.com/story/trevor-noah-shuts-down-tomi-lahren-on-her-racist-comments-about-black-lives-matter), so I can at least appreciate my **aunt for that. While spotting covert racism might not be too difficult, dealing with it sometimes is. Especially because when people wrap up their racism in pretty packaging, they think they are actually doing the world a favor. So, now that we’ve sheered the sheep and uncovered the bigots, what do we do? It depends on context. Remember Bigoted Brenda? Well, because I was in my place of employment, I had to keep my mouth shut. But, her level of ignorance in any other environment would’ve encouraged me to very directly call her out. I tend to be confrontational about things I that feel are injustices, so I would have gladly asked her, “Who exactly are you referring to as not-American? Oh, the one who looks different than you? What does it mean then to be American?** Also, where does your next KKK meeting take place, ya little shit?!” But again, context is very important. Like how my aunt and I were able to analyze why race was mentioned and like how my coworker and I were able to talk about why she calls security any time a black person comes into the store. There are existing threads of racism that still pump through the veins of the American conscious, and while we may not be able to cut every single one, we can at least confront them and acknowledge them. **Through mindful assessment, we can make changes to not only the biases people around us possess, but also the biases we ourselves possess. When we commit to divulging discrimination that’s intended to be shrouded with euphemism, we will start** not just combating covert racists but converting them**. While Bigoted Brenda infects the world with smiley-faced hatefulness, you don’t have to sit by and listen. Whether it’s your neighbor, your coworker or even a family member, call out covert racism when you hear it and please, let your buddies know that having a token black friend does not permit them to claim racism is dead.**

### Jaschik

#### Banning heckling is key to respect free speech for campus speakers

**Jaschik:** Jaschik, Scott [Contributor, Inside Higher Ed] “Is Heckling a Right?” *Inside Higher Ed.* February 2010. RP

Every few minutes during a talk last week at the University of California at Irvine, the same thing happened. A student would get up, shout something critical of Israel, be applauded by some in the audience, and be led away by police. The speaker -- Michael Oren, Israel's ambassador to the United States -- was repeatedly forced to stop his talk. He pleaded for the right to continue, and continued. University administrators lectured the students and asked them to let Oren speak. In the end, 11 students were arrested and they may also face charges of violating university rules. (Video of the event, distributed by a pro-Israel group, can be [found here.](http://www.youtube.com/watch?v=7w96UR79TBw)) Those who interrupted Oren, not surprisingly, are strong critics of Israel who believe that they must draw attention to the Palestinian cause. But an argument put forward by some national Muslim leaders in the last week has sent the discussion in a new direction. Those groups maintain that interrupting a campus speech -- even repeatedly -- should be seen as a protected form of speech. "The students voiced political views to shame the representative of a foreign government embroiled in controversy for its outrageous violations of international humanitarian and human rights law. Delivering this message in a loud and shocking manner expressed the gravity of the charges leveled against Israeli policies, and falls within the purview of protected speech," said [a letter released by the Council on American-Islamic Relations.](http://www.prnewswire.com/news-releases/cair-nlg-ask-calif-university-da-to-drop-charges-against-irvine-11-84310337.html) That statement followed one by Salam Al-Marayati, executive director of the [Muslim Public Affairs Council,](http://www.mpac.org/article.php?id=1027#axzz0fY2X72ca) which said: "These students had the courage and conscience to stand up against aggression, using peaceful means. We cannot allow our educational institutions to be used as a platform to threaten and discourage students who choose to practice their First Amendment right." **Those statements are quite different from the view of Irvine officials. Michael Drake, the chancellor, had** [**this to say after the interruptions:**](http://www.chancellor.uci.edu/100209_disruption.php) **"This behavior is intolerable. Freedom of speech is among the most fundamental, and among the most cherished, of the bedrock values our nation is built upon. A great university depends on the free exchange of ideas. This is non-negotiable. Those who attempt to suppress the rights of others violate core principles that are the foundation of any learning community. We cannot and do not allow such behavior." All of this raises the question: Is interrupting a campus speaker ever a legitimate form of free expression? Most higher education leaders welcome vocal protests outside a speaking venue and quiet protest (leaflets, for example) inside, but draw the line at interrupting speakers. Last year, protesters disrupted a speech at the University of North Carolina at Chapel Hill by the former Rep. Tom Tancredo, a leader of the movement to limit the government and other benefits of those who do not have the legal right to live in the United States. (Video of that incident** [**may be found here.**](http://www.youtube.com/watch?v=m7naTR5QCxo)**) The incident prompted Holden Thorp, chancellor at Chapel Hill, to condemn the protest. He said at the time: "We expect protests about controversial subjects at Carolina. That's part of our culture," he said. "But we also pride ourselves on being a place where all points of view can be expressed and heard. There's a way to protest that respects free speech and allows people with opposing views to be heard. Here that's often meant that groups protesting a speaker have displayed signs or banners, silently expressing their opinions while the speaker had his or her say. That didn't happen last night." Many other experts on free speech and protest agree -- and some are disappointed that national organizations are defending the right to shout repeatedly during a campus talk. "That's definitely not free speech," Jarret S. Lovell, a professor of politics at California State University at Fullerton, said of the interruptions at Irvine and similar tactics elsewhere. Lovell is a scholar of protest and the author of** [**Crimes of Dissent: Civil Disobedience, Criminal Justice, and the Politics of Conscience**](http://www.nyupress.org/books/Crimes_of_Dissent-products_id-11038.html) **(New York University Press). Not only does Lovell think the tactic is wrong in that it denies a hearing to whoever is being interrupted, but he thinks it fails to win over anyone. "When you only hear sound bites" from those interrupting, the students come off as intolerant, he said. "There are so many better ways to demonstrate."** Lovell said that he believes students' willingness to shout down someone they don't like reflects the state of discourse in an era when people pick Fox News or NPR because they want to find information sources whose coverage they agree with. "People think there is no real reason for free speech when you can just change the channel. They believe that the marketplace of ideas means that if they don't buy it, it doesn't go in their shopping-cart." As one who identifies himself as critical of Israel's policies and sympathetic to the Palestinian cause, Lovell said that the Irvine hecklers should realize what will happen next. "It's only a matter of time until [Norman Finkelstein](https://www.insidehighered.com/news/2007/04/03/finkelstein) speaks at UCI and Jewish groups shout him down," Lovell said of the controversial scholar viewed by many Jews as anti-Israel and anti-Semitic (Finkelstein would admit to the former, but not the latter). Wayne Firestone, national president of Hillel, takes a similar view. He said that the interruptions of Israel's ambassador of course mattered to many Jewish students. But Firestone noted that the ambassador was invited by the law school and political science department, and he said that the issues involved would matter regardless of the topic of the talk or the views of the speaker. He said that the idea that interruptions of a speaker are part of free speech is "a candidate for the worst idea of the year." He added that "if a precedent is set on this issue" that it's OK to shout during a campus talk, "then any group that opposes any speaker can literally stop discussion and debate from taking place" by interrupting repeatedly during a talk. Firestone said that there should be many opinions on campus, and that all views should be expressed, but that to do so, you need "a notion of respect and fair play" that allows people to give their talks. **The Foundation for Individual Rights in Education** [**blog featured similar views:**](http://www.thefire.org/article/11560.html) **"Failing to punish offenders appropriately is likely to threaten the free speech of future speakers by effectively condoning a 'heckler's veto' through disruptive actions. That would make a mockery of the First Amendment."** Hussam Ayloush, executive director of the Los Angeles branch of the Council on American-Islamic Relations, defended his group's defense of the interruptions at Irvine. He said that it was unfair to say that the students who interrupted were trying to shut down the talk because they voluntarily left the room after each interruption, and let the talk start again (until the next outburst at least) and eventually let it finish. "Let's put it in perspective. The speaker had an hour to speak, and they each had less than a minute." Ayloush noted that he is frequently interrupted when he gives lectures, and that it goes with the territory. "We firmly believe that both the representative of the foreign government had the full right to speak and the students being addressed have the right to express their speech, too," he said. Asked why it might not be better to organize protests with a rally outside or leaflets or signs that don't interrupt a talk, Ayloush said such approaches might well be better, but that this was beside the point and that he wouldn't exclude the heckling strategy used at Irvine. "These are all tactics and different methods of expressing their free speech, and everyone might have their favorite," he said. "The First Amendment was never intended to be exclusively polite and courteous." Yet another perspective holds that some, modest interruption (less than what took place at Irvine) may be seen as an expression of free speech that doesn't limit the right of a speaker to be heard. Cary Nelson, national president of the American Association of University Professor, said he holds that view, although he said this was not a question on which there was an AAUP policy. And he said that he believes that "most faculty members regard interruption as unacceptable." Nelson said he was a fan of [the speech/protest policy of the University of Michigan.](http://spg.umich.edu/pdf/601.01.pdf) That policy says: "Within the confines of a hall or physical facility, or in the vicinity of the place in which a member of the university community, invited speaker, or invited artist is addressing an assembled audience, protesters must not interfere unduly with communication between a speaker or artist and members of the audience. This prohibition against undue interference does not include suppression of the usual range of human reactions commonly displayed by an audience during heated discussions of controversial topics. Nor does this prohibition include various expressions of protest, including heckling and the display of signs (without sticks or poles), so long as such activities are consistent with the continuation of a speech or performance and the communication of its content to the audience." Along these lines, Nelson said that some brief demonstration against a speaker doesn't strike him as an assault on free speech "so long as the speaker is allowed to continue." He added that "an interruption that signals extreme objection to a speaker's views is part of the acceptable intellectual life of a campus, but you have to let the speech go on," and he said that he did not believe that repeated interruptions were appropriate in that they would disrupt a talk. "Free speech doesn't mean you are able to trample a campus event." While defending such a tactic as potentially consistent with ideals of free expression, Nelson added that he personally always favored other approaches. Nelson was at a speech by John Sexton, the president of New York University, after that institution ended recognition of its graduate student union and fought off a strike by supporters of the union. Nelson said he walked to the front of the auditorium, turned his back on Sexton and stood silently through the talk. While the speech was not about graduate unions, Nelson said he wanted to show "my rejection of everything he stood for." But he said he wouldn't have interrupted. Nelson said that one of the most moving and effective protests he ever attended was as an undergraduate at Antioch College in the early 1960s. George Lincoln Rockwell, the founder of the American Nazi Party, was the speaker. No one shouted at him, although the students considered him hateful. "The audience was totally silent and then, during the question period, no one would ask him a question and he began cursing at the audience, but no one would speak," Nelson said. "To me it was incredibly moving because of the solidarity of the audience, and of the possibility of a certain kind of silent witness," he said. Nelson said he wished more protests today used such an approach in which opposition is totally clear but no one tries to stop the talk. "There is a tremendous sense of dignity in silent witness," he said.

### Kressel

#### Privatization of public spaces threatens democracy and movements against neoliberalism – change is stifled

**Kressel:** Kressel, Shirley [Shirley Kressel is a landscape architect and neighborhood activist living in Boston.] “PRIVATIZING THE PUBLIC REALM.” August 1998. RP

**American governments at all levels are abdicating responsibility for the creation and maintenance of public space**. Deferring to "private- sector efficiency," governments are shifting oversight of the public realm to private corporations unconstrained by legal mandates regarding such things as union labor, universal access, free speech, and free assembly. **Corporations and developers are aggressively promoting this privatization. Privatization of public space has some immediate commercial purposes. It can be highly profitable to developers, and it enables large-scale property owners to exclude "undesirables"—the homeless, the downmarket, the non-shoppers—from places of investment and privilege intended to attract up-scale suburbanites, the urban elite, and tourists with disposable income. But privatization of public space also represents a more fundamental elite agenda**. Privatization of the public realm substitutes the private corporation for public institutions as the repository of trust, legitimacy, and communal identity in our society. By acts of custodianship and gift-giving, by naming socially-significant institutions with corporate names, by substituting company logos for official flags, the private sector subverts the idea of democracy and the public good and makes all of America a "company town" to which we are coming to owe our soul. **The privatization of public space is part of a pattern which includes the privatization and corporate invasion of public schools, the proposed privatization of Social Security, the corporate takeover of health care, and other policies geared to define our lives and our society in terms of corporate needs and corporate power**. To implement corporate goals, designers have developed a vocabulary of elements to impose private agendas on public space. One popular form is the "captured" street: a public street is closed, and the land given over to the private owner or developer as a means of land assembly for structures larger than the pre-existing scale. These streets may remain "open" in some fashion, subject to deed restrictions for hours of access and maintenance requirements. But the public sphere is diminished, entrepreneurial power is concentrated, and the signal is sent that enclosed private space, rather than the public street, is the preferred—and, above all, safe— place to be. **Corporations claim that spaces are "public" as long as anyone can enter.** By this criterion, shopping centers have equal status as a public good with town squares. (Town squares as centers of community life have been displaced by shopping malls reachable only by private auto, where people engage in private consumption on private space.) Shopping malls, once largely a suburban phenomenon, are spreading in cities as the basis of the "revitalization" movement, allowing corporations to reclaim the new urban frontier. Designers usually use implicit rather than explicit means to achieve the psychological, economic, and physical exclusion of "undesirable" elements from the gathering places of the privileged and to enshrine corporations as the source of the life of society. They use such design elements as buildings, streetscapes, land use, circulation, and other means of control of the physical environment. For example, designers diminish the public realm by relegating the pedestrian-oriented ground floor of buildings to secondary status, using the ground floor instead for parking and other utilitarian purposes. Visitors enter the new NikeTown in Boston, located on a very busy pedestrian street, by car or through a lobby from which they are swept by escalator upward, away from the public streets to the more exclusive environment above. Landscape design is being intensively subverted to support the privatization agenda. Several elements have become markers for privatized "landscaping." These include roof gardens as "public open space"; large planters occupying sidewalk space that would otherwise attract crowds of milling people; and festive banners bearing advertising in some form, incorporating private business promotion into our everyday travels in the public realm, akin to the transformation of public buses into rolling ads by advertising "wrap." Commercialized public "art" is increasingly appearing in public areas, sponsored by corporations. Since public art has a strong moral authority, it is certain that more objects in space will be appearing, with grateful plaques to the sponsors, as corporations exploit this benevolent imagery. Public spaces are the arenas where the collective, common life which defines us as a society is acted out, and where we come into contact with those who are like and those who are different from ourselves. They are the places where we are all equal and where we are all "home." **They are the places where our freedoms of speech and assembly are protected, where we can exercise the precious right of criticizing the government.** In public spaces we are reminded of the most important civics lesson: We are all in this together. When private agendas of stratification and control are imposed on those places, the very heart of democratic principle is threatened. **Democracy cannot survive when we have no place to gather where there is "no purchase necessary." Democracy cannot survive substituting property rights for civil rights. Democratic principle cannot survive subordinating citizenship to consumerism. The transformation of public space into a corporate preserve is an attempt by powerful elites to erase from our minds a consciousness of ourselves as people with goals which transcend a market-defined framework of social interaction and values which cannot be measured by the "bottom line." Above all, the privatization of public space is an attempt to diminish the democratic dreams of ordinary citizens and to make us forget that we have the power to achieve them.**

### Kohn

#### Limits on speech function conveniently to stifle criticism of university privatization

**Kohn:** Kohn, Margaret [Professor of Political Science, Oxford] “Brave New Neighborhoods – The Privatization of Public Space.” *Routledge.* 2004. RP

**The concept of free speech zones, however, is gaining popularity among image-conscious university administrators as well as security conscious police chiefs. On March 25, 2002 antisweatshop activists at Florida State University (FSU) were arrested by the campus police. They had inadvertently staged their camp-in outside the designated “free-speech zone.**” They had set up their tents by the fountain on Westcott Plaza, in front of the main administration building, a site particularly suited to reaching their target audience. **Their goal was to pressure the university administration to join the Workers Rights Consortium, an organization that monitors the conditions under which university brand-name athletic clothing is produced. Students claimed that FSU receives three million dollars annually from Nike as part of an endorsement contract, which stipulates that all Seminoles (FSU athletes) display the Nike logo on their athletic uniforms. Nike has threatened not to renew endorsement deals with universities that join the Workers Rights Consortium. Student protesters highlighted this issue and hoped to embarrass university President Talbot “Sandy” D’Alemberte into reversing his stance against joining the consortium. The twelve students were arrested, charged with “trespass after warning,” and brought to Leon County Jail**. The students were released after posting a $500 bond. Six months later the students were brought to trial and acquitted. After nationwide negative press attention, **President D’Alemberte wrote a letter to the St.Petersburg Times insisting that there were no free speech zones at FSU. He claimed that students could leaflet in any part of the campus and that the antisweatshop activists were not punished for political speech but rather for obstructing foot traffic**. According to D’Alemberte, the student activists set up dozens of tents on Westcott Plaza and some were blocking the paths leading to the administration building, which also contained one of the campus’s largest lecture halls.43 While endorsing the students’ right to protest administration policy, he emphasized that the rules applied were eminently reasonable “time, place, and manner” restrictions. So are there free speech zones at FSU? The contested policy is found in the campus code outlining “Student Rights and Responsibilities.” The code explicitly recognizes the right to freedom of speech and assembly, while specifying that such political activity must not “disrupt nor interfere with the operation of the institution nor impede vehicular or foot traffic including ingress and egress from any campus facility**.” The code also distinguishes between “open platform areas” where students may exercise speech and assembly rights without obtaining a permit (but still governed by the limitations above) and the rest of the campus, where students may assemble only if they receive a permit 24 hours in advance.** After the arrests, the antisweatshop protesters relocated to one of the two “open platform” areas: Landis Green, a centrally located area, far from D’Alemberte’s office. Shahar Sapir, one of the protest leaders, lamented, “We wanted to be constantly visible to him, in front of his office, and now we’re completely invisible out here.”Dozens of public universities have designated specific areas—sometimes obscure corners of campus—as free speech zones.45 Although many people associate protest with anti-Vietnam War-style leftist activism, the restrictions have also drawn the ire of conservative groups. An anti-abortion group recently challenged the University of Houston’s decision to refuse them a permit to display photos of aborted fetuses in a central location on campus.46 Other universities have modified their zoning policies under pressure from students and sympathetic faculty. For example, the University of South Florida designated two areas on campus as free speech zones. One required a reservation through the Student Activities Office and the other was available on a first-come, first- served basis. The policy elicited widespread criticism and was quietly abolished.47

#### 

### Calvert

#### Fake news can’t be defined

**Calvert:** Calvert, Clay [Professor & Brechner Eminent Scholar in Mass Communication and Director of the Marion B. Brechner First Amendment Project at the University of Florida, Gainesville, Fla. B.A., 1987, Communication, Stanford University; J.D. (Order of the Coif), 1991, McGeorge School of Law, University of the Pacific; Ph.D., 1996, Communication, Stanford University. Member, State Bar of California.] “[Fake News, Free Speech, & the Third-Person Effect: I’m No Fool, But Others Are](http://wakeforestlawreview.com/2017/02/fake-news-free-speech-the-third-person-effect-im-no-fool-but-others-are/).” February 2017. RP

The presidential election season of 2016 brought with it massive news media hand- wringing, if not outright panic in some quarters, about so-called fake news.[1] **As described by the New York Times, fake news is “widely understood to refer to fabricated news accounts that are meant to spread virally online.”[2] According to that newspaper, “[m]ost of the fake news stories are produced by scammers looking to make a quick buck”[3] and “[t]he vast majority of them take far-right positions.”[4] Others, however, contend “[t]he term ‘fake news’ is fuzzy. It can refer to a multitude of problems, including disinformation, propaganda, [and] conspiracy-mongering.”[5] It can even sweep up satirical news articles.[6]**

#### Banning fake news increases state power

**Calvert:** Calvert, Clay [Professor & Brechner Eminent Scholar in Mass Communication and Director of the Marion B. Brechner First Amendment Project at the University of Florida, Gainesville, Fla. B.A., 1987, Communication, Stanford University; J.D. (Order of the Coif), 1991, McGeorge School of Law, University of the Pacific; Ph.D., 1996, Communication, Stanford University. Member, State Bar of California.] “[Fake News, Free Speech, & the Third-Person Effect: I’m No Fool, But Others Are](http://wakeforestlawreview.com/2017/02/fake-news-free-speech-the-third-person-effect-im-no-fool-but-others-are/).” February 2017. RP

Ultimately, as if presciently predicting the controversial rise of fake news in 2016, Gey concluded that “purveyors of nonsense are merely incidental beneficiaries of the ideological agnosticism mandate that has characterized the expansion of First Amendment protections during the twentieth century.”[31] The agnosticism mandate encompasses the notion that “collective political control of speech is inconsistent with democratic self-governance not because it will lead to more social evils in the form of bad political results, but rather because free speech regulation undermines the very character of the democratic political system itself.”[32] **In brief, while fake news possesses no political or social value, allowing the government in the realm of politics—the realm in which today’s concerns about fake news fester and flourish—to define what is true and false improperly vests a deep skepticism about the good faith of those controlling the government. We instinctively assume that the government does everything for a political reason. If the government punishes the expression of factual falsehoods—such as Holocaust denial —it does so because the statement of such facts are bound up with political perspectives that the government seeks to undermine. temporary political majorities with authority that contradicts democratic self-governance.**

#### The counterplan is paternalizing

**Calvert:** Calvert, Clay [Professor & Brechner Eminent Scholar in Mass Communication and Director of the Marion B. Brechner First Amendment Project at the University of Florida, Gainesville, Fla. B.A., 1987, Communication, Stanford University; J.D. (Order of the Coif), 1991, McGeorge School of Law, University of the Pacific; Ph.D., 1996, Communication, Stanford University. Member, State Bar of California.] “[Fake News, Free Speech, & the Third-Person Effect: I’m No Fool, But Others Are](http://wakeforestlawreview.com/2017/02/fake-news-free-speech-the-third-person-effect-im-no-fool-but-others-are/).” February 2017. RP

**The implications of the third-person effect for the regulation of fake news should, by now, be clear. People who scream and cry for its regulation by the government likely believe that they are not influenced or impacted by fake news in any way. They are too smart for that. Instead, it is only the foolish and simple-minded “others”—dare one even say the non-elites or, perhaps, the huddled masses in so-called fly-over states?—out there who surely will be duped by it.** Therefore, the logic goes, it should be censored in the name of promoting a healthy and hearty democracy. This logic, of course, provides a rich vein of research for communication scholars to mine in the near future. But, for now, it should make those calling for censorship take caution in their tone.

### Goomar

#### Restrictions on speech function as a way to privatize public spaces and prevent people from truly challenging the status quo

**Goomar:** Goomar, Sarah [ACLU Fellow] “The Threat of Privatized-Public Spaces on Free Speech.” ACLU. January 2015. RP

**The rights to free speech and assembly are indispensable in a functioning democracy, but private public partnerships (PPPs), often constitute states of exception. Two organizations in Detroit – Women in Black and Moratorium NOW! – have been denied the right to leaflet and petition along Detroit’s RiverWalk and in Campus Martius as a result of their PPP status as public spaces managed by private entities**. Campus Martius and the RiverWalk are managed by the Detroit 300 Conservancy and the Detroit Riverfront Conservancy, respectively. Both are private non-profit organizations that use their own security forces to monitor these popular spots in the heart of Detroit. Cheryl Labash, a member of Moratorium NOW!, a coalition that seeks to foster economic justice in Detroit, is pursuing legal action on the matter with the ACLU. Labash was stopped by a private security guard and unable to freely protest and make public her organization’s concerns last year. **Though public spaces, private security is at liberty to prevent activists and organizations from protesting and speaking in support of their cause as it sees fit**. Labash said, in an interview with the ACLU, “Downtown has basically been sanitized and that’s not what this country says that it’s about...We want to make sure that these opposing views or different views or different narratives of what’s happened in Detroit and the things that are important do have a place in downtown Detroit.” Campus Martius and the RiverWalk’s private management and security guards can choose, rather arbitrarily, when they object to a protest. It may be worth noting that, Moratorium NOW!, which seeks to bring light to foreclosures, evictions, and utility shutoffs in Detroit. Their mission and interests effectively run counter to the increasing private influence of the city at large. Similar questions of who is allowed protest in PPPs have arisen elsewhere. Black Lives Matter Minneapolis, a group whose mission it is to fight institutional racism and police brutality, gathered in protest on December 20th at the Mall of America. Mall authorities and the Bloomington police disbanded the protest and stated days later their intentions to pursue criminal charges and seek payment for lost revenue. Though the mall was created in part by and continues to thrive on millions of dollars in public subsidies, its private ownership allows it to criminalize protesters deemed unfit. For instance, 7,000 protestors were allowed to gather in order to honor the life of a man who had passed as a result of cancer, yet half that number was met with riot gear while mourning the life of Eric Garner. **The denial of public space as a locus for free speech and assembly experienced by Labash and the Women in Black stands to represent the increasing privatization of Detroit - whether it be in the form of water shutoffs, private security, or through the withdrawal of workers’ pensions funding - and the lack of accountability that too often follows when profit and property are privileged over people. Minneapolis and Detroit are hardly the sole victims of this; the private commandeering of public spaces is becoming an increasingly flagrant phenomenon for urban America at large. The ACLU has worked in Maine as well as New York, as well to ensure that public space can be relied upon as a place of free and unencumbered protest and assembly. The private management and policing of public spaces puts First Amendment rights in a truly dire position, discounting the potential public dissent has in remedying injustice.**

### Payne

#### Only an unflinching critique of speech codes that unequivocally defends fee speech can retake America from a culture of censorship.

**Payne:** Payne, Daniel [Daniel Payne is a senior contributor at The Federalist. He currently runs the blog Trial of the Century, and lives in Virginia.] “[The Coming Free Speech Apocalypse](http://thefederalist.com/2016/08/22/the-coming-free-speech-apocalypse/).” *The Federalist*. August 2016. RP

**Americans generally do not appreciate the United States’ astonishing free speech regime, particularly compared to the historical bastions of political liberalism in Western Europe**. The French penal code criminalizes “defamation” of people based on “their membership or non-membership, real or supposed, of an ethnic group, nation, race or religion;” in Britain the police can investigate you for criticizing Muslims; in Ireland they have something called the “Prohibition of Incitement to Hatred Act,” which prohibits “inciting” “hatred” against anyone based on, among other factors, “membership [in] the travelling community” and “sexual orientation” (Ireland also forbids speech that “undermine[s] public order or morality or the authority of the State”). Even our neighbor to the north, Canada, forbids people from “incit[ing] hatred against any identifiable group.” America is not like that: in the United States, you can incite hatred against a gay gypsy Muslim bureaucrat, even specifically because he is a gay gypsy Muslim bureaucrat, and you will not be thrown in jail. In America you can say just about any offensive thing imaginable, directed at just about any group or person imaginable, and you’ll be okay. Add to that the strong protections for political speech that statute and Supreme Court precedent have established, and America is almost unique among the nations of the world in terms of freedom of expression. **We have it good. But that might not always be the case. In fact in the very near future American free speech may be sharply curtailed.** It is not a sure thing—Supreme Court precedent regarding the First Amendment is robust enough to present would-be censors with something of a challenge—but nevertheless there is a good chance that American enemies of American free speech will shortly mount a sustained and eventually successful effort to drastically reduce American speech freedoms. Who are these enemies? There are three of them: Hillary Clinton (backed by a Democratic Party that is rabidly anti-free speech), Donald Trump (unchallenged by a weak and useless Republican Party), and, most tragically, the American people themselves. With the possible exceptions of John Adams and Woodrow Wilson, there might never be a president more hostile to freedom of speech than Hillary Rodham Clinton. Clinton has promised, if elected, to introduce a constitutional amendment within her Qirst month in ofQice that would effectively repeal the First Amendment by overturning the Supreme Court’s Citizens United v FEC decision from 2010. Very simply, Citizens United ruled that Americans do not lose their freedom of speech rights when they band together in corporate form and under the auspices of labor unions and other types of organizations. Practically speaking, this was an uncontroversial and obvious affirmation of American First Amendment rights. But Hillary Clinton has set herself up against this ruling as if it were the Black Death, claiming her litmus test for nominating Supreme Court justices is if they will vote to overturn Citizens United and thus make it more difQicult for Americans to speak freely and openly. Clinton actually has a long history of anti-free speech positions, so in a sense this is unsurprising. But now she is poised to become president of the United States, and with that bully pulpit—and the power of the executive order—you can be sure her avaricious, relentless desire to curtail free speech will be a potent threat to our precious First Amendment freedoms. You can be equally certain the Democratic Party will be happy to help her out. The Democratic platform not only calls for overturning Citizens United but also calls upon the Justice Department to “investigate allegations of corporate fraud” of fossil fuel companies “accused of misleading shareholders” on “the scientiQic reality of climate change.” This is a creative way of calling on government to prosecute skeptics of global warming hysteria. In addition, the DNC calls upon Democrats to “condemn hate speech that creates a fertile climate for violence.” It is essentially guaranteed that, within a few years’ time, the “condemnation” of “hate speech” will progress to demands for an outright prohibition. Progressives in Europe have already done it; progressives in America are assuredly not far behind. You might think the Republican nominee for president would stand as a counterweight to the Democratic nominee’s censorious tendencies. You would be wrong. Trump himself has come out against super PACs, which are simply coalitions of American citizens who have banded together to voice their political opinions. **Trump has also vowed to “open up” libel laws in order to silence his critics. Lest you think this is an empty threat, it’s important to note Trump has already admitted to using libel laws to silence his critics. He also called for “closing [the] Internet up in some way” to combat terrorism, while dismissing those who would be concerned about freedom of speech as “foolish people.” Would the GOP stand against Trump’s demonstrable hostility to the First Amendment? Not likely. Much of the Republican establishment has already proven itself reluctant to challenge Trump in any substantive way. Trump’s obvious antipathy to freedom of speech, coupled with his strongman ambitions and lack of resistance from an emasculated GOP, could pose a serious if not existential threat to American freedom of expression. Surely, even if our corrupt and power-hungry elite ruling class opposes freedom of speech, the American people will resist any real efforts to curtail the First Amendment, right? Not so fast. There are genuinely distressing signs that the culture of American free speech is as endangered as the policy. Some poll numbers suggest as much: two-thirds of Americans, for instance, think people who engage in “hate speech” are “more dangerous” than the people who would censor it.** Among younger Americans—millennials—the polls indicate a staggering opposition to freedom of speech: out of 800 students polled at colleges across the country, more than a third believed the First Amendment does not protect “hate speech,” with a third also claiming the First Amendment is “outdated;” more than half believe colleges should have speech codes to police the speech of students and professors. Forty percent of millennials, meanwhile, think government should be able to censor “offensive statements about minorities.” Indeed, millennials appear to be the most censorious generation alive. As older generations die off or become less politically active, we can assume that more and more anti-free speech millennials will make up a larger and larger share of the electorate. All of which is to say: if we are worried about the anti-free speech ambitions of our two presidential candidates and the parties they represent, we should also be concerned about the American body politic, a substantial percentage of which is greatly inclined to censor “offensive” speech. A generation so inclined to muzzle its fellow Americans could pose an existential threat to the First Amendment. So how do First Amendment-loving Americans fight against this rising tide of illiberal anti-speech hostility? **The solution is actually quite simple:** we must take an absolutist zero-tolerance position regarding censorship and speech policing**. In the same way that the National Rifle Association is relentless in fighting the curtailing of Second Amendment rights, Americans must relentlessly protect First Amendment rights. This means fighting against efforts to overturn Citizens United (and fighting more broadly against any efforts to censor and police political speech); combating speech codes on college campuses and elsewhere; working tirelessly against the wannabe-tyranny of people like Trump and platforms like that of the Democratic Party; and fighting vigilantly for the right of all Americans to say what they what, about what they want, in whatever way they choose to do so. This does not mean you have to defend things like libel or other knowingly false and slanderous statements. It simply means you must fight for the precious free speech rights of every American citizen against the growing effort to criminalize those rights**. (It might also help if you familiarized yourself with the Supreme Court rulings on free speech. **Knowledge can be an invaluable tool when fighting against illiberalism and authoritarianism.) These concerns are not academic or theoretical.** As much of the rest of the world proves, governments are usually extremely willing to silence and censor their citizens, and too often the citizenry is willing to lay down and take it. **The American tradition of free speech is very strong and well-established. But that doesn’t mean it can’t be swept away. It is up to all of us—as American citizens and freeborn men and women— to guard against these encroachments on our God-given liberties, and to ensure that the invaluable American free speech regime continues as long as does the American Experiment.**

### Giroux – The Ghost of 1984

#### IF YOU DON’T LIKE AN IDEA, CLOSE YOUR EYES AND IT MIGHT GO AWAY – America is living in a securitized dream that celebrates banning and censorship as a catch all to any problems

**Giroux:** Giroux, Henry A. [Waterbury Chair Professor, Pennsylvania State University] “Combating Trump's Neo-Fascism and the Ghost of ‘1984’.” Truthout. February 2017. RP

**Normalization is code for a retreat from any sense of moral and political responsibility, and it should be viewed as an act of political complicity with authoritarianism and condemned outright**. What is being propagated by Trump's apologists is not only a reactionary popularism and some fundamental tenets of an American-style authoritarianism, but also a shameless whitewashing of the racism and authoritarianism at the center of Trump's politics. In addition, little has been said about how Trump and his coterie of semi-delusional, if not heartless, advisors embrace a version of Ayn Rand's view that selfishness, war against all competition and unchecked self-interest are the highest human ideals. In addition, arguments in defense of such normalization appear to overlook with facile indifference how the rhetoric of authoritarianism has become normalized in many parts of the world, to grave effect, and that the Trump administration has clearly demonstrated an affinity with that sort of hateful rhetoric. How else to explain the support that Trump has received from a number of ruthless dictators who head reactionary governments, such as the Philippines, Turkey and Egypt, among others? Such a danger is all the more ominous given the current collapse of civic literacy and the general public's increasing inability to deal with complex issues on one hand, and the attempt, on the other hand, by those who maintain power to ruthlessly promote a depoliticizing discourse of lies, simplicity and manufactured distortions. **The United States has entered a new historical conjuncture that echoes elements of a totalitarian past.** Hannah Arendt, Sheldon Wolin and Robert Paxton, the great theorists of totalitarianism, believed that the fluctuating elements of fascism are still with us and that as long as they are, they will crystalize in different forms. Far from being fixed in a frozen moment of historical terror, these theorists believed that totalitarianism not only "heralds as a possible model for the future" but that its "[protean origins are still with us](http://www.hannaharendtcenter.org/?p=12466)." **Arendt, in particular, was keenly aware that a culture of fear, the dismantling of civil and political rights, the ongoing militarization of society, the attack on labor, an obsession with national security, human rights abuses, the emergence of a police state, a deeply rooted racism and the attempts by demagogues to undermine education as a foundation for producing critical citizenry were all at work in American society.** Historical conjunctures produce different forms of authoritarianism, though they all share a hatred for democracy, dissent and human rights. More recently, Robert Paxton in his seminal work, The Anatomy of Fascism, provides a working definition of fascism that points to both its anti-democratic moments and those elements that link it to both the past and the present. Paxton's point is not to provide a precise definition of fascism but to understand the conditions that enabled fascism to work and make possible its development in the future. Accordingly, he argues that fascism is: A form of political behavior marked by obsessive preoccupation with community decline, humiliation or victimhood and by compensatory cults of unity, energy and purity, in which a mass-based party of committed nationalist militants, working in uneasy but effective collaboration with traditional elites, abandons democratic liberties and pursues with redemptive violence and without ethical or legal restraints, goals of internal cleansing and external expansion. It is too easy to believe in a simplistic binary logic that strictly categorizes a country as either authoritarian or democratic and leaves no room for entertaining the possibility of a mixture of both systems. **American politics today suggests a more updated if not different form of authoritarianism or what might be called the curse of totalitarianism**. In Trump's America, there are strong echoes of the fascism that developed in Europe in the 1920s and 30s. **For instance, there are resemblances to a fascist script in Trump's scapegoating of the "other;" his claim that the United States is in a period of decline;  his call to "Make America Great Again;" his blatant appeal to ultra-nationalism;  his portrayal of himself as a strongman who alone can save the country; his appeal to aggression and violence aimed at those who disagree with him; his contempt for dissent; his deep-rooted anti-intellectualism**, or what Arendt called "thoughtlessness" (i.e., denial that climate change is produced by humans) coupled with his  elevation of instinct and emotion over reason; his appeal to xenophobia, national greatness and support for a politics of disposability; his courting of anti-Semites and white supremacists; his flirtation with the discourse of racial purity; his support for a white Christian public sphere; his use of a kind of verbal waterboarding to denigrate Muslims, Blacks, undocumented immigrants and women's reproductive rights; his contempt for weakness and his enthusiasm for hyper-masculinity. Trump's totalitarian mindset was on full display both during his inaugural speech and in his actions during his first few days in office. In the first instance, he presented a dystopian view of American society laced with racist stereotyping, xenophobia and the discourse of ultra- nationalism. [Frank Rich called the language of the speech](http://nymag.com/daily/intelligencer/2017/01/trumps-speech-gave-us-america-the-ugly.html) "violent and angry -- 'This American carnage stops right here' -- reeking of animosity, if not outright hatred [and that] the tone was one of retribution and revenge." As soon as the speech ended, the normalizing process began with the expected tortured clichés from various Fox News commentators calling it "muscular," "unifying," "very forceful," "just masterful," and [Charles Krauthammer stating](http://www.slate.com/blogs/the_slatest/2017/01/20/how_fox_news_described_trump_s_inaugural_address_muscular_masterful_completely.html) that it was "completely nonpartisan." The fog of self-delusion and denial was in full swing at CNN when the historian Douglas Brinkley called Trump's inaugural address not only "presidential" but "solid and well-written" and the "best speech" Trump has made "in his life." **Once in the Oval Office, Trump not only enacted measures to facilitate building a wall on the Mexican border and prevent people from seven Muslim-majority countries from entering the United States, he also cleared the way for resurrecting the construction of the Keystone XL and Dakota Access pipelines**. Trump's broader assault on environmental protections is indicative of his disregard for the rights of the Native Americans who protested the building of a pipeline that both crossed their sacred burial lands and posed a risk to contaminating the Missouri River, which is the primary water source for the Standing Rock Sioux. In response to Trump's inaugural address and early policy measures, Roger Cohen, a columnist for The New York Times, wrote [a forceful commentary](https://www.nytimes.com/2017/01/24/opinion/the-banal-belligerence-of-donald-trump.html?smprod=nytcore-ipad&smid=nytcore-ipad-share&_r=0) suggesting that Trump's neo-fascist tendencies were on full display and that his presence in American politics contains echoes of former dictators and augurs badly for American democracy. He argued: But the first days of the Trump presidency ... pushed me over the top. The president is playing with fire. To say, as he did, that the elected representatives of American democracy are worthless and that the people are everything is to lay the foundations of totalitarianism. It is to say that democratic institutions are irrelevant and all that counts is the great leader and the masses he arouses. To speak of "American carnage" is to deploy the dangerous lexicon of blood, soil and nation. To boast of "a historic movement, the likes of which the world has never seen before" is to demonstrate consuming megalomania. To declaim "America first" and again, "America first," is to recall the darkest clarion calls of nationalist dictators. To exalt protectionism is to risk a return to a world of barriers and confrontation. To utter falsehood after falsehood, directly or through a spokesman, is to foster the disorientation that makes crowds susceptible to the delusions of strongmen. The grave period Americans are about to enter into under a Trump regime cannot be understood without an acknowledgement of the echoes of a totalitarian past. With Trump's election, the crisis of politics is accompanied by a crisis of historical conscience, memory, ethics and agency exacerbated by an appeal to a notion of common sense in which facts are regarded with disdain, words reduced to slogans, and science confused with pseudo-science. **Under such circumstances, language is emptied of any meaning and constitutes a flight from ethics, justice and social responsibility. As language rapidly loses meaning, the American public is inundated with empty slogans such as "post-truth" and "fake news.**" This culture is part of what [Todd Gitlin calls "](http://www.commondreams.org/views/2017/01/07/welcome-vortex)an interlocking ecology of falsification that has driven the country around the bend." Against the background of an infantilizing culture of immediacy, spectacle and sensationalism, Trump will govern as if he is running a reality TV show, endlessly performing for an increasingly depoliticized public. But there are more dangers ahead than the toxic seduction of politics as theater and the transformation of the mainstream media as an adjunct of the entertainment industry or for that matter, a growing distrust of democracy itself. Under casino capital, the alleged celebration of the principle of a free press hides more than it promises. Noam Chomsky, Bill Moyers and Robert McChesney, among others, have observed that the mainstream media now work in conjunction with the financial elite and the military-industrial-academic complex as an echo chamber while further indulging in the rituals of shock, celebrity culture and spectacularized violence in order to increase their ratings. Earlier this year, [CBS CEO Les Moonves stated](https://www.democracynow.org/2016/11/9/it_might_not_be_good_for) that his network's inordinate and disastrous coverage of Trump "may not be good for America but it's damn good for CBS." Moonves openly gloated not only because the network was pumping up its ratings but was also getting rich by inordinately covering Trump's presidential campaign. As he put it, [T]he money's rolling in ... [T]his is going to be a very good year for us.... It's a terrible thing to say, but bring it on, Donald. Go ahead. Keep going." Moonves made it clear that the power of mainstream media in general has little to do with either pursuing the truth or holding power accountable. **On the contrary, its real purpose was to normalize corruption, lies, misrepresentation, accumulate capital and allow the transformation of the press to become an adjunct of authoritarian ideologies, policies, interests and commodified values -- if that is what it takes to increase their profit margins**. Normalization is about more than dominant media outlets being complicit with corrupt power or willfully retreating from any sense of social responsibility; it is also about aiding and abetting power in order to increase the bottom line and accumulate other cowardly forms of power and recognition. This is evident in the fact that some powerful elements of the mainstream press not only refused to take Trump seriously, they also concocted embarrassing rationales for not holding him to any viable sense of accountability. For instance, Gerard Baker, the editor-in-chief of The Wall Street Journal, publicly announced that in the future he would not allow his reporters to use the word "lie" in their coverage. NPR also issued a statement arguing that it would [not use the word "lie"](http://variety.com/2017/biz/news/npr-donald-trump-lies-1201969581) on the grounds that "the minute you start branding things with a word like 'lie,' you push people away from you**." In this truly Orwellian comment, NPR is suggesting that calling out lies on the part of governments and politicians should be avoided by the media on the grounds that people might be annoyed by having to face the contradiction between the truth and misinformation. This is more than a retreat from journalism's goal of holding people, institutions and power to some measure of justice; it also legitimizes the kind of political and moral cowardice that undermines informed resistance, the first amendment and the truth. While such actions may not rise to the level of book burning that was characteristic of various fascist and authoritarian regimes in the past, it does mark a distinctive retreat from historical memory and civic courage that serves to normalize such actions by making dissent appear, at best, unreasonable and at worst, an act of treason**. Such actions become apparent in efforts by the mainstream press to rage against the rise of "fake news," suggesting that by doing so, their integrity cannot be questioned. Of course, the term "fake news" is slippery and can be deployed to political ends -- a maneuver which is on full display particularly when used by Trump and his merry band of liars to dismiss anyone or any organization that holds him accountable for his fabrications. Hence, there were no surprises when Trump at his first president-elect press conference refused not only to take questions from a CNN reporter because his network had published material critical of Trump but also justified his refusal by labeling CNN as fake news -- reducing the term to a slogan used to silence the press. **Clearly, we will see more of this type of bullying repression and censorship, and traditional democratic public spheres, such as higher education, will also feel the brunt of such an attack.** Any analysis of the forces behind the normalization of the Trump administration and its assault on the truth, if not democracy itself, must include the powerful role of the conservative media in the United States. Former conservative radio talk show host Charles Sykes recently published a [remarkable op-ed](https://www.nytimes.com/2017/02/04/opinion/sunday/why-nobody-cares-the-president-is-lying.html) arguing that over the last few decades, right-wing media played a major role in discrediting and delegitimizing the fact-based media. In doing so, it destroyed "much of the right's immunity to false information." According to Sykes, conservatives, including himself, created a "new post-factual political culture" that has become so powerful that even when the Trump administration is caught lying, it does so with impunity because it believes that "the alternative-reality media will provide air cover" that allows it to pollute "political discourse" and discredit "independent sources of information." Evidence of this major assault on truth can be measured in part by the magnitude of the lies the administration produces, which are truly Orwellian. For instance, Kellyanne Conway attempted recently to justify Trump's executive order banning people from seven majority-Muslim countries by referring to what she called the "Bowling Green massacre, an alleged terrorist attack by Iraqi refugees that was to have taken place in 2011. According to Conway, Obama instituted a six-month ban on Iraqi resettlements. The attack never happened, no Iraqis were involved and the Obama administration never instituted such a ban. It gets worse. White House Press Secretary Sean Spicer recently claimed that Iran had committed an act of war by attacking a US Naval vessel. That never happened. What did happen is that a Saudi ship off the coast of Yemen was attacked by Houthi rebels. Normalization has many registers and one of the most important is the control by the financial elite over commanding cultural apparatuses that produce, legitimize and distribute highly selective media narratives that shore up the most reactionary ideologies and financial interests. The mainstream press says little about how such actions serve as an apology for the egregiously reactionary nature of Trump's ideology and policies. Moreover, they fail to note how distortions of the truth, the endless production of lies by governments, politicians and corporations, along with the media's flight from civic literacy, serve to bolster authoritarian societies willing to distort the truth while simultaneously suppressing dissent. Under such circumstances, it should not be surprising that Trump's authoritarian and hateful discourse, threats of violence, loathing of dissent and racist attitudes toward Muslims, Blacks and Mexican immigrants are downplayed in the mainstream media. These structured silences have become more and more apparent given the benign manner in which the supine press and its legion of enervated anti-public intellectuals and pundits treat Trump's endless nighttime Twitter outpourings and his incessant choreographed public fabrications.

#### 

### McGowan

#### Free speech is key to resist state power

**McGowan:** McGowan, David F. [Law clerk, Judge A. Raymond Randolph, United States Court of Appeals for the District of Columbia Circuit. B.A. 1986, University of California, Los Angeles; J.D. 1990, Boalt Hall School of Law, University of California, Berkeley] “A Libertarian Critique of University Restrictions of Offensive Speech.” California Law Review. May 1991. RP

Holmes, who was acquainted with Mill, introduced the metaphor of "the marketplace of ideas" into first amendment jurisprudence in his famous dissent in Abrams v. United States: Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care whole-heartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached through free trade in ideas -- that the best test of truth is the power of the thought to get itself accepted in the competi- tion of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment. Holmes' premise is that any idea might be true, and therefore suppression of ideas might cause the suppression of truth. The premise as stated would include, of course, racist ideas. **Holmes' premise has carried the day in first amend- ment jurisprudence, which currently recognizes "no such thing as a false idea."** n51 Neither the premise nor the [\*835] conclusion, however, is indisputable or even ultimately persuasive. Even if one assumes that truth is an absolute good, n52 the argument is difficult to maintain. Initially, the premise appears by its terms limited to a discourse of ideas distinct from statements of fact. n53 There are certain statements that we accept as true and, therefore, except from the ambit of the marketplace theory -- even if such acceptance reflects nothing more than our shared interpretation of certain uses of language. n54 In other words, we consider some statements sufficiently verifiable that we do not need to be skeptical about whether some other statement might actually be the truth; we accept that we have a way definitively to resolve any dispute. If I say the temperature is 100 degrees, the reader may safely rely upon a thermometer if she wishes to check whether I am mistaken. To borrow an example from Professor Post, a statement about the weather on a date hundreds of years ago is perceived as factual even though it cannot be verified today. n55 The decision to suspend skepticism about such speech comports with the Court's view that "there is no constitutional value in false statements of fact." Even when properly confined to speech articulating ideas, however, a version of the marketplace theory that seeks to justify the freedom of speech as the best way to find objective truth must assume that we will recognize truth when it is presented. The theory offers no criterion for judging truth, however, nor any empirical evidence that truth will be recognized. And there is ample empirical evidence refuting an uncritical reliance on people simply to know truth when they see it. n57 Indeed, as Justice Holmes' Abrams dissent implicitly recognized, the marketplace theory is, at bottom, a process-driven theory. It is an experiment in ascertaining truth and achieving the good society. As a process, however, it offers no view on the ultimate question of what constitutes objective truth other than to say that such truth, whatever it is, is more likely to emerge from this process than from any other. One is tempted to skirt this difficulty by arguing that the truth is itself defined by the marketplace -- truth is that which comes to be accepted through competition. As a justification, however, the argument is perfectly circular: **We protect speech in order to preserve a marketplace of ideas that seeks truth, "truth" being defined as that which emerges from the marketplace. In other words, we create a marketplace to provide us with truth, which we proclaim as such when it is a product of our creation. Worse, a rigidly process-based theory of objective truth should make us at least a touch uncomfortable. The Nazis were able to avail themselves of a relatively open marketplace to gain power, n58 and racism has a lengthy history of dominating the marketplace in the United States**. The point for now is simply that we should be reluctant to abandon completely the idea of objective truth in favor of a rationale that is, as stated, so com- pletely circular. We should not read substantive content into a procedural metaphor. Because marketplace theory is process-based, we must confront another problem: why choose this process over any competing process? As Professor Schauer puts it, "[i]f truth is defined by reference to and in terms of a process, then why is the process of open discussion preferable [\*837] to any other process, such as random selection or authoritarian fiat?" n59 We may postulate that freedom to argue is a necessary condition to the discovery of truth, even if not a suffi- cient one, but we still have not solved the problem of extracting substantive criteria for truth from a process-based theo- ry. Moreover, if we really are seeking truth instead of merely a congenial process, we would be better off with an om- niscient dictator rather than a marketplace of ideas. This problem is highlighted by what appear to the modern eye to be failures in the marketplace of ideas. Assuming for the moment that we can articulate criteria sufficient to identify objective truth, can we realistically be sure that said truth will prevail in the marketplace? **This Comment is written in part because of the historical prevalence of racist ideas in this country, and there are innumerable examples of other nations -- from Nazi Germany to South Africa -- adopting creeds that modern Americans view as repugnant**. As we will explore in greater detail below, these cases often (if not always) reflect more an intentional, governmental distortion of the marketplace than a flaw in the basic theory. Never- theless, the theory provides no way to defend against a population that willingly adopts objectively destructive and re- pugnant beliefs, and would prohibit the government from regulating against them. **All this, however, does not require us to abandon marketplace theory as a justification for free speech. For one thing, by comparatively maximizing the amount of speech available for consideration, it provides criteria pursuant to which we may test the utility of speech (as opposed to other activity) in leading to the possible discovery of truth.** n61 More importantly, the skeptical premise of the argument allows us to shift our [\*838] focus to the more relevant ques- tion: Even given that individual determinations of truth are often suspect, why should we expect the government to do any better? **Arguments demonstrating the difficulty of individual determinations of objective truth apply with equal, and in fact greater, force to governmental determinations. As Professor Schauer argues, "[a]s individuals are fallible, so too are governments fallible and prone to error**. Just as we are properly skeptical about our own power to distinguish truth from falsity, so should we be even more sceptical of the power of any governmental authority to do it for us." **Marketplace theory is therefore based in large part upon "the possibility and history of error [that] makes us proper- ly wary of entrusting to any governmental body the authority to decide what is true and what is false, what is right and what is wrong, or what is sound and what is foolish**." n63 Inevitably, therefore, we are faced with a choice between two imperfect options: **Either we leave to each individual the choice of what is true and false, right and wrong, and the like, or we grant to the government the power to make that choice and to enforce its choice by prohibiting dissent**. In this sense, we must choose either a free market, a command economy of ideas, or some mixture of the two. **Simply put, the marketplace theory rests ultimately upon the consummately libertarian belief that individuals are better judges of what is best for them than is the government.** n64 Marketplace theory therefore rests ultimately upon the relative risks of oppression involved. A**s between the risk that individuals will choose the "wrong" truth and the risk that government will do so, marketplace theory prefers the former**. This preference reflects the government's effective monopoly on the use of "legitimate" force to enforce its view of the truth. If an individual mistakenly believes falsity to be true, she suffers for her mistake. If a government makes the same error, millions of people may suffer. To borrow from Professor Epstein on the larger point: A fine despot may do wonders for a while: public roads may be constructed, the trains may run on time, and the Dow may reach three thousand. But a bad despot, or a good despot turned bad, has quite the opposite effect. Our con- cerns go beyond potholes, train delays, and the bear market. We worry about tyranny, terror, confiscation, segregation, imprisonment, and death. There is more to fear from the downside than there is to gain from the upside. . . . [T]he two different forms of error do not have equal weight. **We should set our presumption against the concentration of power in the hands of the government. Too much power is more dangerous than too little. It is true that the theory gives us no protection from a population that selects Nazism from the marketplace. The unfortunate fact is that no other system would, either**. The communists were to liberate the people from the czars. But who will liberate them from the communists? No system is perfect, nor any perfectly safe. But dispersing the choice of what is true and false doctrine, good and bad policy, to the people is ultimately the best hope of avoiding tyranny. Writing of statutory interpretation, Holmes said: "[I]f my fellow citizens want to go to Hell I will help them. It's my job." n66 If enough people embrace an idea of government, evil or not, they will implement it and no theory can change that. That being said, we may say in favor of the theory that an open marketplace is possibly the only means short of war to displace a repugnant ideology. As Judge Easterbrook wrote in striking down the Indianapolis antipornography statute, "**Free speech has been on balance an ally of those seeking change. Governments that want stasis start by restricting speech. . . . Without a strong guarantee of freedom of speech, there is no effective right to challenge what is." n67 Thus, though we have come a long way from Abrams, Holmes' approach remains sound. We need only replace the notion that the marketplace will yield objective truth with the extension of the argument's skeptical premise to government officials seeking to regulate speech. Under this view then, "the first amendment is not the reflection of a society's highest aspirations, but rather of its fears, being simultaneously the pessimistic and necessary manifestation of the fact that, in practice, neither a population nor its authoritative decisionmakers can even approach their society's most ideal theoretical aspirations."** n68

#### Speech codes establish a static set of virtues and rules that don’t allow communal changes [A2 communitarianism/virtue]

**McGowan:** McGowan, David F. [Law clerk, Judge A. Raymond Randolph, United States Court of Appeals for the District of Columbia Circuit. B.A. 1986, University of California, Los Angeles; J.D. 1990, Boalt Hall School of Law, University of California, Berkeley] “A Libertarian Critique of University Restrictions of Offensive Speech.” California Law Review. May 1991. RP

**On the communitarian view, persons derive a moral identity and the ability to make "determinate choices about how to live" only as members of particular groups or communities**. n189 It is common for a campus to define itself as a "community." n190 Given this fact, and given Aristotle's statement that "every community is established with a view to some good," n191 one can see how a particular community (the university), with a particular view of the good (enhancing racial or sexual equality), could seek affirmatively to promote the good by limiting speech that contradicts the good. Many proponents of campus regulations of offensive speech express such a view of the good. Professor Matsuda, for example, argues that universities present a special case justifying the regulation of speech at least in part because university students present a particularly vulnerable class of potential victims of racist speech. n192 She stresses that they are away from home for the first time and "dependent on the university for community." n193 She contends that these university "communities" "exist and stand for" the goals of "inclusion, education, development of knowledge, and ethics." n194 **The existence of a community, however, does not in and of itself tell us anything about the desirability of regulating speech. It is important to note Professor Post's argument that there must be some point at which community norms (embodied in prohibitions in or regulations of speech) must be suspended so that members of the community may critically analyze views not instantiated in the community's norms. With respect to content-based restrictions on speech, the members of a community therefore must at some point allow for speech that violates community norms. The alternative is to embrace a static community in which ideas and norms evolve internally, if at all, and in which the community abjures the possibility that any views outside its norms could possibly have merit.**

#### Censorship shouldn’t happen in classroom settings, among professors – the best ideas should have the opportunity to be discussed and heard

**McGowan:** McGowan, David F. [Law clerk, Judge A. Raymond Randolph, United States Court of Appeals for the District of Columbia Circuit. B.A. 1986, University of California, Los Angeles; J.D. 1990, Boalt Hall School of Law, University of California, Berkeley] “A Libertarian Critique of University Restrictions of Offensive Speech.” California Law Review. May 1991. RP

Against this background, it is apparent why the first formal effort to define and implement a coherent and nation- wide policy on academic freedom in the United States took pains to put forth an alternate view of the relation between the university and the individual professor. The American Association of University Professors (AAUP) issued its first Principles of Academic Freedom in 1915, and the conception there articulated was and remains the foundational and most eloquent (if not most recent) statement of the professional conception of academic freedom. The AAUP put forth the idea that even private universities were not, for the most part, truly private concerns. Instead, the Declaration argued, they were entrusted with a public mission: the advancement of knowledge in all its forms, and through that advance the advancement of the republic as a whole. In short, universities were to carry out the project of the Enlightenment. This, however, required that the profession make a decision as to how such an advance was best to be achieved. The 1915 Declaration clearly commits the AAUP to what was in essence the marketplace theory of truth. n411 The Declaration is for the most part phrased in the language of science, reflecting the prevailing view of the day that most disciplines were "sciences" of one sort or another. n412 In such disciplines, the goal was to move ever closer to a single, objective, and ultimately knowable truth. **With knowledge so conceptualized, the profession's commitment to mar- ketplace theory is readily understood: As long as the search for truth proceeds according to commonly agreed on princi- ples, such as standards of verifiability, ability to be reproduced, and rules of proof, error can be detected, and corrected, in a relatively efficient way**. The consequence is that the AAUP rejected any attempt institutionally to define truth. Truth is, of course, never considered conclusively established. It is always open to challenge and possible refutation. The individual freedom required by the marketplace model was clearly inconsistent with a relationship based on master-servant principles. Instead, the university administration and the board of trustees were viewed as trustees in a much stronger sense: holders of a trust from the public as a whole, a trust dedicated to the idea of free inquiry into the truth. n415 Professors, in turn, were viewed not as employees in the traditional sense, but rather as appointees, who should hold their appointments during good behavior. n416 **The academy had come to conceive of [\*910] itself as a pro- fession, properly subject only to self-regulation**. Self-regulation n417 was and remains one of the keys to the implementation of the professional view of academic freedom. Decisions as to hiring, promotion, and evaluation are to be made by faculty committees. n418 While those decisions are subject to approval by various levels of the university administration, n419 culminating in the board of trustees, the professional view of academic freedom contemplates that such actors should only rarely, in the most extreme of circumstances, overturn the decisions of the peer review committee. **The legal conception of academic freedom is generally stated in terms of the "four freedoms" of universities, from a statement by South African universities quoted by Justice Frankfurter in his concurrence in Sweezy v. New Hampshire: n421 The right of the university "to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study." n422 The relationship between the academic mission and the univer- sity's restrictions on speech is what justifies its claim of exemption from the strictures of the first amendment. n423 The values underlying this freedom are that universities are the prime players in the disinterested (that is, unbiased) search for knowledge, that they foster a method of thought and discourse conducive to that search, and that they instill such capabilities in others, who in turn carry those values into society.** The necessary consequence of this is that the legal conception of academic freedom does relatively little to protect the interests of individual professors, as opposed to institutions. n424 If the goal is to maximize institutional autonomy and minimize intrusion by the government, the fact that courts are part of the government limits the extent to which they can substitute their judgement for the choices of the institution. Thus, courts generally do not characterize the claims of individual professors as "academic freedom" claims, preferring instead to resolve such claims under general first amendment analysis. Applying the different conceptions of academic freedom to the problem of potentially offensive professorial speech yields differing results. **The legal conception probably would prohibit certain express limitations imposed by a board of regents or president, but quite possibly only if imposed on the subject matter of a class or course of research. In any case, such restrictions imposed by an administration normally would be opposed vigorously by the faculty and peer re- view organs within a university. The real problem occurs when precisely those organs, usually the guarantors of the rights of individual professors, become the actors who either initiate or acquiesce in the restriction on faculty speech**. If, as was the case with the situation involving Professor Sarich, there was a possibility not only of disciplinary action against a professor, but disciplinary action taken by a faculty committee, n426 there is little that courts would be willing to do to intervene. The issue thus collapses to a normative one: how ought peer review committees judge cases involv- ing allegations of offensive speech on the one hand, and academic freedom on the other? The issue in large measure returns to the goals of the university, the preferred method for achieving those goals, and so to marketplace theory. There is little we can add here to the discussion of marketplace theory given above. A peer review committee should be mindful of its role as the internal guarantor of professional autonomy. Thus, when faced with a case involving what Professor Matsuda has termed "[p]oorly documented racially biased work," n427 a peer review committee should take care to ensure that its judgment is based solely on the first, and not the second, set of ob- jectives.

#### Free speech is key to reject privatization of universities – campuses serve as unique public forums.

**McGowan:** McGowan, David F. [Law clerk, Judge A. Raymond Randolph, United States Court of Appeals for the District of Columbia Circuit. B.A. 1986, University of California, Los Angeles; J.D. 1990, Boalt Hall School of Law, University of California, Berkeley] “A Libertarian Critique of University Restrictions of Offensive Speech.” California Law Review. May 1991. RP

**Public forum doctrine is relatively recent, and has been characterized by confusion regarding both its foundations and application. The doctrine states that certain places and resources controlled by the government are public fora, where speech will receive the full protection of the first amendment, whereas other places and resources controlled by the government are not.** These latter places are more analogous to private property where speech may be restricted. n430 The doctrine was born in Hague v. CIO, in which the Court struck down an ordinance requiring a permit for public parades or meetings in streets and parks. Acknowledging that the government owned the land in question, and that a private landowner could restrict speech on his property at will, the Court concluded that the government held public streets and parks in trust for the people, and that these streets and parks have been devoted to expressive activity from time immemorial. Such a simple formulation quickly ran into trouble, however, and in recent years the Court has refined the forum inquiry to focus on the primary purpose of the government institution at issue and on the compatibility of first amendment activity with that purpose. In Cornelius v. NAACP Legal Defense and Educational Fund, Inc., for example, the federal government sought to exclude all advocacy organizations from the Combined Federal Campaign, or CFC. n436 The Court concluded that although the CFC took place in a public office, the government intended to facilitate the raising of charitable donations, while minimizing the accompanying disruption of the federal workplace. n437 Finding that both goals would be thwarted by allowing advocacy organizations to join the CFC, and finding no intent on the part of the government to open the federal workplace to all speech, the Court held that the CFC was not a public forum. **Thus, the public forum doctrine examines the primary mission of the government institution, and only permits regulation of speech that is fun- damentally incompatible with that mission. n439 If we use this approach to inquire whether universities are public fora, we must look first to the traditional role the university has played. The language the Court has chosen in the past indi- cates that it views campuses as crucially involved in the marketplace of ideas. n440 This view supports the conclusion that a university campus is in fact a public forum. The language of past holdings on campus speech suggests that the Court has traditionally viewed universities as unique locations where speech plays a heightened role and thus where the interchange of ideas, even offensive ideas, receives full first amendment protection**. n441 The Court has spoken of "the . . . significant interest in the widest latitude for free expression and debate consonant with the maintenance of order." n442 Moreover, the Court emphasized that the first amendment does not allow for standards based upon the content of speech. Instead, the Court stated, the first amendment was particularly committed to protecting academic freedom, for the classroom "is the peculiarly 'marketplace of ideas.'" The Court provided a final gloss on the question of the university as a public forum in Widmar v. Vincent. n446 In Widmar, the Court was faced with a challenge to a University of Missouri policy that denied use of campus facilities to groups meeting for religious purposes while allowing their use by secular campus groups. n447 **The Court held that the university had created a public forum "open for use by student groups" by opening its facilities generally to such groups. n448 The campus' status as a public forum in turn subjected to first amendment scrutiny any university policy that restricted use**. n449 Thus, the Court's holding linked a marketplace model of the university with content-based constitu- tional standards. It therefore appears that even managerial authority n450 has limits when that authority seeks to restrict speech because of the ideas the speech contains. The exercise of such authority is valid only insofar as it serves to facil- itate the marketplace. n451 The analysis is clearest when the area in question is a campus plaza, commons, or quad. Such a space closely re- sembles the traditional "speaker's corner" of a public park. More importantly, it is a speaker's corner for a community whose primary mission is best carried out through maximizing the exchange, discussion, and investigation of ideas. The physical characteristics of such an area are another important factor in determining whether it is a public forum. Such open spaces allow students to move freely from one conversation to another, or to avoid debates altogether. **Speakers and listeners are not subjected to speech they cannot avoid**. n452 Such characteristics, as well as the voluntary participation of the speakers and listeners involved, provide the sort of "buffer zone" that makes it likely that different sensibilities and points of [\*915] view can be accommodated. n453 **To limit n454 speech in such a location would run counter to both the traditional physical conception of a public forum and the educational mission of a university.** While the analysis may appear more complicated in the classroom, neither forum analysis nor marketplace theory ultimately supports a conclusion different from the one we reached above. **Although the physical characteristics of a classroom certainly differ from some traditional public fora, they by no means preclude the conclusion that the class- room is also one. The classroom is at the core of the educational mission of the university. It is where ideas are not merely exchanged, but are subjected to reasoned inquiry**. Appeals to emotion have less place there than on a soapbox. This means that an erroneous idea expressed in class is likely to meet searching scrutiny and be effectively disproved. Moreover , the classroom is the primary place for students to acquire the tools necessary to disprove, as opposed merely to disagree with, racist assumptions. The success of this endeavor may be less certain, and certainly less fully tested, if those in the classroom cannot dissect offensive assumptions out loud. Most of the objections to "free speech" in a classroom can in fact be expressed as time, place, and manner limits. When a professor decides which students to recognize, and in what order, she simply is using a precedence system that varies only slightly from the "first come, first served" method. The fact that students are expected not to conduct an argument by screaming at one another reflects a straightforward manner limitation on volume. n455 The key is that a pro- fessor could not consistently refuse to call on a student because she disagreed with the student's views, or allow some students to yell while requiring others to whisper. In such an event the professor would be imposing speech restrictions unrelated to the academic mission, and thus would forfeit the university's claim to be exempt from the first amendment. These traditional understandings of the proper functioning of a classroom reflect the classroom's purpose as a forum for the interchange of ideas. **The classroom resembles a market under perfect conditions -- it exists for the introduction and exchange of ideas, not for their inculcation**. The most complicated situation is presented by residence halls. The university is generally the owner, but resi- dence halls are also, at least in part, private living spaces for the students who occupy them. Traditionally, [\*916] private homes have been viewed as enclaves which to some extent displace the first amendment. n456 This means that, at the very least, a university could restrict the right of one student to enter another's room. The university most likely could also discipline a student who posted material on another student's door, since such speech would be directed at the personal residence of the affected student. n457 The common living spaces of a dormitory (for example, the lounges, re- strooms, and recreation halls) present a more difficult problem, but one that ultimately can be solved through an exami- nation of the physical characteristics and purposes of the specific areas. Lounges in which students hold open discus- sions, meetings, and the like are probably public fora, while dormitory study halls devoted to solitary reading probably are not. Even in those spaces that are not traditional public fora, restrictions on speech must conform to the limits of viewpoint-neutrality. n458 The determination that the vast majority of space on a university campus is a public forum is consistent with the general rationale of the "marketplace of ideas." Marketplace theory works best where inquiry can be full and where val- ues of rationality apply. n459 To the extent that our society is committed to the argument from truth, the university is "pe- culiarly" the marketplace of ideas in part of necessity: If reason cannot be expected to prevail in such a setting, it cannot be expected to prevail anywhere. This view of the role of the campus clashes with Professor Matsuda's view that the campus has a special obligation to restrict racist speech because its students are especially vulnerable. **First, because the structure of classroom debate makes it more likely that no opinion will go unchallenged, if we are confident that racist ideas are insupportable, then the university would seem the ideal place to have them aired and disproved.** Second, if, as Professor Matsuda says, ed- ucation and the development of knowledge are among the goals of the university, then it seems anomalous to adopt a policy that is both at odds with that development through the marketplace of ideas and stifling to the education of per- sons who hold false views -- who, at least in Professor Matsuda's eyes, are presumably in the most desperate need of education. If the university [\*917] is a public forum, the main conclusion we can draw is that the first amendment applies with full force on campus. This serves to negate arguments by proponents of offensive speech regulations that the campus should adopt special measures against offensive speech. It does not prevent the campus from taking action consistent with the first amendment, however, to limit nonpublic discourse that would not otherwise qualify for first amendment protection. n460

### Hartzog

#### Status quo solves – even if the First Amendment allows revenge porn, the Fourth Amendment doesn’t

**Hartzog:** Hartzog, Woodrow [Woodrow Hartzog is an Assistant Professor at the Cumberland School of Law at Samford University. His research focuses on privacy, human-computer interaction, online communication, and electronic agreements. He holds a Ph.D. in mass communication from the University of North Carolina at Chapel Hill, an LL.M. in intellectual property from the George Washington University Law School, and a J.D. from Samford University. He previously worked as an attorney in private practice and as a trademark attorney for the United States Patent and Trademark Office. He also served as a clerk for the Electronic Privacy Information Center.] “HOW TO FIGHT REVENGE PORN.” T*he Center for Internet and Society*. May 2013. RP

**But one legal argument has somehow failed to make a major appearance in revenge-porn cases: confidentiality**. Broadly speaking, to confide is "to give to the care or protection of another," and it is often the defining trait of explicit media shared between romantic partners. Simply put, explicit images and videos are unlikely to be created or shared with an intimate without some expectation or implication of confidence. This reality has been acknowledged but underutilized in the dominant narrative on non-consensual pornography. **In contrast to new rights that would be created by proposed "anti-revenge porn" laws, confidentiality is already a well-established legal concept. It is older than all of the privacy torts and statutes in America**. Nevertheless, the concept has languished in law and our conversations about social relationships. Arguably, there are several reasons for this. Confidentiality agreements are socially awkward and provide for limited damages. Traditionally confidential relationships are rare, usually being limited to professional relationships like those between doctors and patients and attorneys and clients. Perhaps most significantly, confidentiality law doesn't directly restrict the most injurious actor in the debate -- websites. While romantic partners who receive explicit materials might be prohibited from further disclosure, websites and other third-party recipients are not bound by the same rules because they presumably have no relationship with the person depicted in the media. But one of the most likely reasons confidentiality law has not played a larger role in the modern privacy debate is that most of our social communications are not conditioned upon an express or even implied promise of confidentiality. **It is difficult to imagine, though, a more illustrative context of implied confidences than explicit material shared between intimates.** Indeed, this argument has been made for some time now. Yet confidentiality law has remained a relatively limited and insignificant remedy in the larger patchwork of privacy jurisprudence. We should have a better national dialogue about a romantic partner's obligations of confidentiality**. Salient norms of confidentiality would strengthen our relationships as well as the legal remedies for those whose trust has been betrayed. Notably, confidentiality law is not as problematic under the First Amendment as legislation or other tort remedies**. Instead of prohibiting a certain kind of speech, confidentially law enforces express or implied promises and shared expectations. **The tort of breach of confidentiality is currently very limited in scope, but could be made much more robust to sit alongside the more commonly asserted privacy torts. Under an "inducement to breach confidentiality" theory, it is even possible that certain websites would not be able to take full advantage of the immunity typically provided by Section 230 of the Communications Decency Act.** So how are individuals in a romantic relationship supposed to determine whether information is confidential? The best practice has always been to secure an explicit promise of confidentiality. But that's not always feasible. Confidentiality can also be implied, though determining when it is is a little more complicated. Fortunately, courts have left clues in previous court cases that will help people determine when information should be considered confidential. These clues are consistent with Helen Nissenbaum's theory of privacy as contextual integrity, which has seemingly been embraced by the FTC, among others. Based on case law, it seems that there are a few important aspects in any given context to consider. Developed relationships are more likely to be confidential than brief or shallow ones. Confidentiality is more likely to be found when it is supported by contextual norms and when the information disclosed is sensitive. Courts consider whether the victim requested confidentiality and, even more importantly, whether the recipient promised not to disclose the information. These promises can be vague or even implied. The important question is whether a confidence was apparent before the sensitive information was shared. With the exception of an explicit promise of confidentiality, none of these considerations are dispositive, but rather something to be considered as part of a whole.

### Lukianoff

#### Campus censorship recreates ban culture – the only way to fight confirmation bias is to openly debate bad ideas instead of just wishing them away

**Lukianoff:** Lukianoff, Greg [President of FIRE and attorney] “How Colleges Create the ‘Expectation of Confirmation’.” 2015. RP

**The modern disinvitation movement represents a dramatic (if gradual) shift away from the ethic of robust debate to which both higher education and American society itself nominally subscribe.** Protesting students may regard themselves as descendants of the landmark campus upheavals of the 1960s and early 1970s, but their strategies directly contradict the values of the Free Speech Movement, which, at least in principle, would demand not that speakers be prevented from speaking, but that opponents would get the chance to challenge and debate. Antiwar activists circa 1969 had thick skins and went to jail, accepting the rough- - and- tumble of heated controversy. Disinvitation operates, however, on a different premise. **It is the logical outgrowth of a campus environment that privileges emotional states over hard- nosed discussion and encourages a belief among students that there is a “right not to be offended.”** We have passed from a campus climate in which robust, meaty, and sometimes harsh debate and discussion was regarded as a precondition of genuine learning and maturation, to one in which it is too often seen as a violation properly suppressed before it even happens. **Decades after the supposed heyday of political correctness, I fear, campus culture has only moved farther away from a free speech ethic: the mythical “right not to be offended” is morphing into a stricter “right to have your views confirmed and not challenged.”** Indeed, students are coming to believe that speakers with whom they disagree should not even be allowed on campus. This move toward what I call an “expectation of confirmation” has troubling implications for American society as a whole. In this chapter I explore how the expectation of confirmation not only worsens the intellectual atmosphere on campus but also America’s broader problem of political polarization. Polarization and the Thickening Walls of Our Echo Chambers. In his 2008 book, The Big Sort: Why the Clustering of Like- Minded America Is Tearing Us Apart, journalist Bill Bishop compellingly argues that the United States is growing more politically polarized partially because Americans are increasingly moving to cities, neighborhoods, and counties that reflect their values and political beliefs. The reality of this clustering was laid out in even greater detail in Charles Murray’s 2012 book, Coming Apart, which cited extensive data about the increasing isolation of neighborhoods according to both political viewpoints and economic class. At the same time, the physical isolation that Bishop and Murray discuss is accompanied by increased opportunities to interact in online environments that reflect our existing biases. This trend was already fostered by twenty- four- hour news networks appealing respectively to conservatives and liberals, but has only accelerated as the amount of media produced by partisan websites has grown enough to occupy devoted readers every minute of every day. **Left to their own devices, humans have a tendency to prefer to hear their existing views reflected back to them—and technological advancement has only increased our ability to achieve twenty- four- hour confirmation. We should be concerned about creating echo chambers**. Well- documented social science research demonstrates that people are prone to becoming more radical, and less understanding of opposing viewpoints, the more they cluster together with the like- minded. This affinity can lead to polarization and an intensified sense of tribalism in society, as we see our opponents increasingly as something more akin to alien enemies than fellow citizens with whom we disagree (Sunstein). It’s important, however, to step back for a moment and think about how this polarization may very well be the natural result of what we might otherwise consider progress. The aggregation of people into mutually sympathetic niches not only accords with the basic American right to assembly, but it also follows from the general advance of prosperity and leisure. Ronald Inglehart has outlined the clustering of communities around shared values in his theory of modernization progressing toward the “post- materialist society.” Starting with work he published in the 1970s up through and including his work today, Inglehart theorizes that as societies become more affluent and move up Maslow’s hierarchy of needs, they increasingly seek greater opportunities not only to express themselves and their values but also to have a sense of belonging in like- minded communities. Seen in this light, the clustering of like- minded Americans seems only natural and is indeed part of the vision of a society we might all find seductive. In my everyday life I call these “problems of comfort,” in that increasingly affluent societies generate problems that are the result of relative historic abundance and security. (The modern obesity epidemic, for example, is a “problem of comfort.”) In this case, polarization is the natural result of people seeking out comfortable, self-affirming, morally coherent, and sympathetic communities. We therefore can probably expect political clustering and a propensity for groupthink to be tendencies that increase over time—as well as the illiberal mores and communication breakdowns that accompany them. It is all the more pressing, then, that we model and reform cultural institutions to combat these downsides. **There is, in fact, an existing institution that can help America minimize the negative consequences of a society whose citizens increasingly are able to cocoon themselves in self- affirming communities: higher education**. Whereas once only a small percentage of Americans enrolled in college, as of 2012, as many as two-thirds of high school graduates attend college for at least some amount of time (National Center for Education Statistics). That percentage gets even higher when we factor in the number of citizens who take college classes at some point in their lives. Both the Bush and Obama administrations have pressed for more access and admissions to college, and employers increasingly demand workers with skills typically acquired in postsecondary coursework. The result is an everybody- should- go- to-college mode of thought that makes higher education a central feature of American culture and society. Given its power and reach, higher education would seem to provide a ready- made solution to the problem of a society that naturally fragments into tighter echo chambers. After all, in theory at least, higher education valorizes the Socratic style of skeptical questioning and the systematization of doubt as represented by great scientific heroes such as Newton and Einstein. Also, in the 1960s and 1970s, the academy largely embraced the free- speech, “question authority” culture, and its impact reached beyond the campus walls to become a standard feature of popular culture and political discussion. American higher education should, therefore, be at the vanguard of teaching students to examine their assumptions, to engage in debate and discussion, to seek out opposing viewpoints, and to cultivate the crucial intellectual habit of applying skepticism to one’s most dearly held beliefs. Unfortunately, as I illustrated in my 2012 book, Unlearning Liberty: Campus Censorship and the End of American Debate, higher education is failing to instill in students these intellectual habits, and is, to a surprising degree, teaching students not to question much at all. In Unlearning Liberty, I discuss my twelve years fighting for free speech, academic freedom, and the right to dissent on college campuses at the Foundation for Individual Rights in Education (FIRE). My experience and that of my colleagues leaves me consistently appalled by how transgressions can land a student or professor in trouble. I cannot do justice to the thousands of cases I’ve seen of censorship on campus (see FIRE’s blog, The Torch—http://thefire.org/torch—for an ongoing record of issues and incidents), but some standout examples over the years include A professor at Brandeis University was found guilty of racial harassment for explaining the historical origins of a racial epithet (Guess). Numerous cases where campuses refused to recognize Christian student groups because of their stance on sexuality and traditional marriage (Shibley). A student at Modesto Junior College who was refused the right to hand out copies of the Constitution in the public areas of campus on Constitution Day because he did not request advance state permission and did not limit his activities to the campus’s tiny free speech zone (Kopan). For the better part of two decades, researchers have studied the reservations college students seem to have about sharing their opinions and engaging in debate in class. While sociologists scratch their heads as to why this might be, a 2010 study by the Association of American Colleges and Universities might provide insight (Dey). The study simply asked students, professors, and staff if they believed it was “safe to hold unpopular positions on college campuses.” Note how this question is worded: it does not ask if it is safe to express unpopular points of view, play devil’s advocate, or engage in challenging thought experimentation, but merely if it is “safe” simply to “hold” a point of view. Despite this weak wording, only 40 percent of college freshmen strongly agreed. That percentage gets worse when put to sophomores, and then worse still when put to juniors. Notably, only 30 percent of seniors strongly agree. Apparently, as students learn more about the academic environment on their campuses, they become more pessimistic about their ability to dissent, disagree, and debate. **Tellingly, the most pessimistic group on campus was college professors, of whom only 16.7 percent strongly agreed that it is “safe to hold” unpopular points of view on campus.** The Chronicle of Higher Education, perhaps the most influential niche publication for higher education professionals, placed an interesting spin on this study (Chapman). Despite the fact that the authors themselves were troubled by the low level of “strongly agree” responses to such a weakly worded question, the Chronicle reported the findings as positive because 45 percent of students answered they “somewhat agree” that it is “safe to hold unpopular positions” on campus. If nearly half of students only somewhat agree that it is safe to merely hold an unpopular view on campus, this does not indicate a positive environment for dissent or debate on campus. And again, optimism about the openness of the academic environment declined as students, employees, and professors spent more time on campus. As my experience at FIRE can attest, this pessimism is warranted. But students generally avoid getting in trouble by following four simple rules: Talk to the students you already agree with. Join ideological groups that reflect your existing beliefs.  Do not disagree with professors whose egos cannot take it. In general, shy away from discussing controversial topics. These four guidelines can keep most students out of the dean’s office and free of their peers’ displeasure during their time in college. Unfortunately, these rules only reinforce a problem of clustering and polarization that Mark Bauerlein and many others have observed accelerating on campus over the years—a problem that we know already exists in broader society. The rules also neutralize the unique opportunity that higher education makes possible: having intelligent discussions across lines of ideological difference. The harm of these bad intellectual habits was perhaps best illustrated in a 2011 book titled Academically Adrift: Limited Learning on College Campuses (Arum and Roksa), which demonstrated that students are not showing improvements in their critical thinking skills from matriculation to graduation. Part of this evaluation tested students’ ability to articulate more than one side of an argument. To a disturbing degree, students across institutions could not effectively accomplish this basic intellectual task. If campuses lived up to the promise of encouraging robust debate rather than squelching it, we could expect far better results. What’s more, there can be little doubt that university students are taking the bad habits they learn on campus into the larger society once they graduate. In Diana Mutz’s 2006 book, Hearing the Other Side, the author cites striking evidence of an inverse relationship between how much education one has acquired and how many political disagreements one undergoes in an average month. In other words, people with a high school education or less are the most likely to engage in discussions along lines of political and philosophical disagreement, while those with higher levels of education are less likely. This is precisely the opposite effect that one would expect from an educational environment that properly teaches students that educated people seek out for discussion those with whom they disagree. Confirmation bias refers to the human tendency to prefer data that confirm preexisting hypotheses and discount contrary evidence. It is, to put it mildly, generally considered to be a problem to be overcome, not only in scientific contexts, but in cultural and political settings as well. Unfortunately, given Mutz’s evidence and the caseload at FIRE, we can conclude that higher education seems actually to work toward the opposite goal, promoting in some students a provisional openness to contrary opinions, but an expectation of confirmation: that is, an expectation that their biases should be, at best, validated, but at the very least, not challenged. In a distorted reflection of how fighting confirmation bias helps bring science and other disciplines to better and sturdier ideas, the establishment on campus of this expectation of confirmation threatens to allow thinner, less coherent, and less useful (but more comforting) ideas to flourish. So, American academia, an institution that should help us fight the tendency of Americans to cluster ourselves in self- affirming cliques, instead encourages citizens to reinforce the walls of their echo chambers. Indeed, colleges today instill in students an unrealistic expectation that their environment should conform to their existing biases and beliefs. As they do so, young people earning college degrees fail to recognize that they inhabit a pluralistic society made up of individuals and groups with discrete and sometimes conflicting interests and outlooks, and when they encounter opposing forces, they judge them as wrongheaded or worse and act toward their suppression. Can College Help Break Down the Expectation of Confirmation? Is it possible to set things right? To produce a kind of higher education experience that teaches a generation the creativity, insight, and wisdom that is unleashed by stepping outside our comfortable self- - affirming cliques to engage those with whom we disagree and figure out why we disagree? I’m not always optimistic, but I can chart promising steps toward reform. **Perhaps the most important thing that universities can do is simply to require students to engage in formal debates on meaningful and controversial topics as part of general education requirements. Part of students’ orientation, too, should involve instruction in productive academic engagement, including the axiom that we fight offensive speech not with censorship but with contrary words. The practice of making oneself take the other side of an argument would help critical thinking skills, and it would also reduce the likelihood of people viewing those on the “other side” as representatives of societal evil.** Being able fully to comprehend the opposing side of an argument is a vital skill that will only become more important given that the trend toward self- affirming physical and online environments is unlikely to stop. Even these modest proposals face serious challenges, the magnitude of which was brought home to me by a student with whom I spoke at Harvard in the spring of 2013. He approached me after a speech, saying that he completely believed in everything I had to say about free speech and debate on campus, but that his attempts to get Oxford- style debates on serious issues to happen was met with constant pushback. On the truly controversial issues, whether they were immigration, affirmative action, or the “War on Terror,” he added, the student population would not accept anyone representing the “other side” of the issue. Obviously, it is hard to have real discussions without a willingness to put an onus on the listener to deal with hearing an opinion he or she might dislike or believe to be wrong. After all, a key measure of being an intellectual used to be how well the thinker in question knew the details of opponents’ best arguments. We should instruct students that educated people see it as a duty to seek out intelligent people with whom they disagree for debate and discussion. This would require a major cultural shift away from the way campuses currently operate and is nearly impossible to achieve as long as the “right not to be offended” and the “expectation of confirmation” remain a reality on campus. If we should be so lucky as to have a global environment in which relative material comfort continues to spread, such progress is going to produce new and emergent problems. Economic advancement, we must realize, may entail certain social and cultural costs that educational institutions must address. In much the same way that regular exercise and a disciplined diet help in the fight against obesity, teaching the intellectual habit of fighting confirmation bias, rather than expecting to have views affirmed, is crucial to the intellectual development and civic health of our society. Higher education could and should play a crucial role in this process—but it needs to take a long, hard look at itself and ask if it actually creates an environment that is conducive to the bold questioning and uncomfortable discussions that intellectual and societal innovation demands.

### Powers

#### LIBERALS HAVE TAKEN A PAGE OUT OF THE CONSERVATIVE PLAYBOOK – they silence and *criminalize* all ideas they don’t want to hear, under the guise of hate speech.

**Powers:** Powers, Kirsten [Kirsten A. Powers is an American political pundit. She began her career as a [Democratic Party](https://en.wikipedia.org/wiki/Democratic_Party_(United_States)) staff assistant with the Clinton-Gore presidential transition team in 1992, followed by an appointment as Deputy Assistant U.S. Trade Representative for Public Affairs in the Clinton administration from 1993 to 1998. She subsequently worked in various roles, including press secretary, communications consultant and party consultant.[[1]](https://en.wikipedia.org/wiki/Kirsten_Powers#cite_note-Observer-1) She also serves as a columnist to [USA Today](https://en.wikipedia.org/wiki/USA_Today), [Newsweek](https://en.wikipedia.org/wiki/Newsweek) and [The Daily Beast](https://en.wikipedia.org/wiki/The_Daily_Beast), and was a contributor on [Fox News](https://en.wikipedia.org/wiki/Fox_News).[[2]](https://en.wikipedia.org/wiki/Kirsten_Powers#cite_note-FoxBio-2) She joined [CNN](https://en.wikipedia.org/wiki/CNN) officially as a commentator on August 22, 2016.] “The Silencing: How the Left is Killing Free Speech.” Regnery Publishing. 2015. RP

**The people who smeared Kaminer as a racist and who routinely demonize those who express the “wrong” views, are what I call the “illiberal left.” They are most prevalent on college campuses and in the media – not insignificant perches from which to be quashing debate and dissent – but their tentacles are expanding into every sector of society. They consider themselves liberals, but act in direct contradiction to the fundamental liberal values of free speech, debate, and dissent.** What distinguishes them from mainstream liberals your average Democrat (who shares many of the illiberal left’s policy inclinations) is not so much *what* they believe, but how they believe it. **Most people who reside on the left side of the political spectrum can tolerate difference of opinion without turning into authoritarian speech police. They can either engage or ignore people with whom they disagree. They are not moved to, for example, call for jail time for their ideological opponents as environmentalist Robert F. Kennedy Jr. did for the Koch brothers. More on that later.** **The illiberal left, on the other hand, believes that people who express ideological, philosophical, or political views that don’t line up with their preferences should be completely silenced**. Instead of using persuasion and rhetoric to make a positive case for their causes and views, they work to delegitimize the person making the argument through character assassination, demonization, and dehumanizing tactics. **These are the self-appointed overlords – activists, university administrators, journalists, and politicians – who have determined what views are acceptable to express. So,** shut up – or else.

#### This new form of liberalism results in racialized violence and discrimination

**Powers:** Powers, Kirsten [Kirsten A. Powers is an American political pundit. She began her career as a [Democratic Party](https://en.wikipedia.org/wiki/Democratic_Party_(United_States)) staff assistant with the Clinton-Gore presidential transition team in 1992, followed by an appointment as Deputy Assistant U.S. Trade Representative for Public Affairs in the Clinton administration from 1993 to 1998. She subsequently worked in various roles, including press secretary, communications consultant and party consultant.[[1]](https://en.wikipedia.org/wiki/Kirsten_Powers#cite_note-Observer-1) She also serves as a columnist to [USA Today](https://en.wikipedia.org/wiki/USA_Today), [Newsweek](https://en.wikipedia.org/wiki/Newsweek) and [The Daily Beast](https://en.wikipedia.org/wiki/The_Daily_Beast), and was a contributor on [Fox News](https://en.wikipedia.org/wiki/Fox_News).[[2]](https://en.wikipedia.org/wiki/Kirsten_Powers#cite_note-FoxBio-2) She joined [CNN](https://en.wikipedia.org/wiki/CNN) officially as a commentator on August 22, 2016.] “The Silencing: How the Left is Killing Free Speech.” Regnery Publishing. 2015. RP

**Dissent from liberal orthodoxy is cast as racism, misogyny, bigotry, phobia, and, as we’ve seen, even violence. If you criticize the lack of due process for male college students accused of rape, you are a rape apologist. End of conversation**. After all, who wants to listen to a rape lover? People who are anti-abortion rights don’t care about the unborn; they are misogynists who want to control women. **Those who oppose same-sex marriage don’t have rational, traditional views about marriage that deserve respect or debate; they are bigots and homophobes**. When conservatives opposed the Affordable Care Act’s “contraception mandate” it wasn’t due to a differing philosophy about the role of the government. No, they were waging a “War on Women.” **With no sense of irony or shame, the illiberal left will engage in racist, sexist, misogynist, and homophobic attacks of their own in an effort to delegitimize people who dissent form the “already decided” worldview. Non-white conservatives are called sellouts and race traitors. Conservative women are treated as dim-witted, self-loathing puppets of the patriarchy, or nefarious gender traitors. Men who express the wrong political or ideological view are demonized as hostile interlopers into the public debate. The illiberal left sees its bullying and squelching of free speech as a righteous act.**

#### This suppression of those who disagree in the name of liberalism translate into an Orwellian state

**Powers:** Powers, Kirsten [Kirsten A. Powers is an American political pundit. She began her career as a [Democratic Party](https://en.wikipedia.org/wiki/Democratic_Party_(United_States)) staff assistant with the Clinton-Gore presidential transition team in 1992, followed by an appointment as Deputy Assistant U.S. Trade Representative for Public Affairs in the Clinton administration from 1993 to 1998. She subsequently worked in various roles, including press secretary, communications consultant and party consultant.[[1]](https://en.wikipedia.org/wiki/Kirsten_Powers#cite_note-Observer-1) She also serves as a columnist to [USA Today](https://en.wikipedia.org/wiki/USA_Today), [Newsweek](https://en.wikipedia.org/wiki/Newsweek) and [The Daily Beast](https://en.wikipedia.org/wiki/The_Daily_Beast), and was a contributor on [Fox News](https://en.wikipedia.org/wiki/Fox_News).[[2]](https://en.wikipedia.org/wiki/Kirsten_Powers#cite_note-FoxBio-2) She joined [CNN](https://en.wikipedia.org/wiki/CNN) officially as a commentator on August 22, 2016.] “The Silencing: How the Left is Killing Free Speech.” Regnery Publishing. 2015. RP

**When one thinks of suppressing speech and engaging in ideological witch hunts, Republican Senator Joseph McCarthy is the name that comes to mind**. McCarthy’s ruthless campaign to root out those he believed to be disloyal to the United States spawned the term “McCarthyism” to refer to the practice of making false accusations against political or ideological enemies in an effort to delegitimize and silence them. In addition to his anti-Communist crusades, McCarthy worked to expel from government positions people whom he accused, or threatened to publicly accuse, or homosexuality. **How ironic that today there is a left-wing crusade to expel from positions of authority anyone who opposes same sex marriage. The McCarthyite impulse has come full circle. In March 2014, pioneering Internet company Mozilla announced the appointment of co-founder Brendan Eich as CEO. That same day, a Twitter mob exploded with criticism of Eich**. Gay rights supporters were angry about a six-year-old donation of 1,000 to the “Yes on 8” campaign, which sought to ban same-sex marriage in California in 2008. It’s okay to be angry about Eich’s donation. Screaming for Eich’s head on a pike for his failure to conform to Mozilla’s majority view on same sex marriage is not. **Liberals are supposed to believe in protecting minority views, even when they disapprove of those views.** Instead an online mob of presumably “liberal” people tweeted about Eich’s donation, many calling him a bigot and homophobe for supporting Prop 8. Remember, this proposition passed the same year Senator Barack Obama sat in Rich Warren’s church to explain his religious based opposition to same-sex marriage. Eich took the time to address the criticisms. On his blog he wrote “I am committed to ensuring that Mozilla is, and will remain, a place that includes and supports everyone, regardless of sexual orientation, gender identity, age, race, ethnicity, economic status, or religion. Such assurances proved inadequate, however. Almost seventy thousand people signed a petition organized at CredoAction, a progressive social change organization, telling Eich to renounce his beliefs or resign as Mozilla’s CEO. They accused him of advocating for inequality and hae, and ordered Mozilla to fire him if he refused to resign. Finally, just over a week after his appointment, Mozilla announced that Eich would be stepping down as CEO. “While painful,” wrote Executive Chairwoman Mitchell Baker, “the events of the last week show exactly why we need the Web. So all of us can engage freely in the tough conversations we need to make the world better. It’s not necessary to support Eich’s donation to recognize something deeply disturbing occurred here. **Pushing someone out of his job for dissenting on an issue that has nothing to do with the mission of the company and then portraying the purge as a “free” conversation that boosted humanity is creepily Orwellian. The writer Andrew Sullivan – who is gay and was one of the earliest public advocates of same-sex marriage – wrote at the time of Eich’s ouster, “when people’s lives and careers are subject to litmus tests, and fired if they do not publicly renounce what may well be their sincere conviction, we have crossed a line. This is McCarthyism applied by civil actors. This is the definition of intolerance.**

#### Speech codes function as a continuation of “ban culture” – they suppress even legitimiate ideas and chill discussion.

**Powers:** Powers, Kirsten [Kirsten A. Powers is an American political pundit. She began her career as a [Democratic Party](https://en.wikipedia.org/wiki/Democratic_Party_(United_States)) staff assistant with the Clinton-Gore presidential transition team in 1992, followed by an appointment as Deputy Assistant U.S. Trade Representative for Public Affairs in the Clinton administration from 1993 to 1998. She subsequently worked in various roles, including press secretary, communications consultant and party consultant.[[1]](https://en.wikipedia.org/wiki/Kirsten_Powers#cite_note-Observer-1) She also serves as a columnist to [USA Today](https://en.wikipedia.org/wiki/USA_Today), [Newsweek](https://en.wikipedia.org/wiki/Newsweek) and [The Daily Beast](https://en.wikipedia.org/wiki/The_Daily_Beast), and was a contributor on [Fox News](https://en.wikipedia.org/wiki/Fox_News).[[2]](https://en.wikipedia.org/wiki/Kirsten_Powers#cite_note-FoxBio-2) She joined [CNN](https://en.wikipedia.org/wiki/CNN) officially as a commentator on August 22, 2016.] “The Silencing: How the Left is Killing Free Speech.” Regnery Publishing. 2015. RP

**For many Americans the term “speech code” sends shivers up the spine. Yet these noxious and un-American codes have become so commonplace on college campuses across the United States. They are typically so broad that they could include literally anything and are subject to the interpretation of school administrators who frequent fail to operate as honest brokers. In the hands of the illiberal left, the speech codes are weapons to silence anyone – professors, students, visiting speakers – who expresses a view that deviates from the left’s worldview or ideology. Speech that offends them is redefined as “harassment” or “hate speech” both of which are barred by most campus speech codes. At Colorado College, a private liberal arts college, administrators invented a “violence” policy that was used to punish non-violent speech. The consequences of violating a speech code are serious: it can often lead to public shaming, censoring, firings, suspensions, or expulsions, often with no due process.**

### Pinker

#### Free speech is intrinsically valuable, and is the Achilles’ Heel of the dominant state. A principled approach is key– exceptions to free speech make the right crumble.

**Pinker:** Pinker, Steven [Contributor and Writer, The Boston Globe] “Why free speech is fundamental.” The Boston Globe. January 2015. RP

**MORE THAN two centuries after freedom of speech was enshrined in the First Amendment to the Constitution, that right is very much in the news. Campus speech codes, disinvited commencement speakers, jailed performance artists, exiled leakers, a blogger condemned to a thousand lashes by one of our closest allies, and the massacre of French cartoonists have forced the democratic world to examine the roots of its commitment to free speech**. Is free speech merely a symbolic talisman, like a national flag or motto? Is it just one of many values that we trade off against each other? Was Pope Francis right when he said that “you cannot make fun of the faith of others”? May universities muzzle some students to protect the sensibilities of others? Did the Charlie Hebdo cartoonists “cross a line that separates free speech from toxic talk,” as the dean of a school of journalism recently opined? Or is free speech fundamental — a right which, if not absolute, should be abrogated only in carefully circumscribed cases? **The answer is that free speech is indeed fundamental.** It’s important to remind ourselves why, and to have the reasons at our fingertips when that right is called into question. The first reason is that the very thing we’re doing when we ask whether free speech is fundamental — exchanging and evaluating ideas — presupposes that we have the right to exchange and evaluate ideas. In talking about free speech (or anything else) we’re *talking*. We’re not settling our disagreement by arm-wrestling or a beauty contest or a pistol duel. Unless you’re willing to discredit yourself by declaring, in the words of Nat Hentoff, “free speech for me but not for thee,” then as soon as you show up to a debate to argue against free speech, you’ve lost it. Those who are unimpressed by this logical argument can turn to one based on human experience. One can imagine a world in which oracles, soothsayers, prophets, popes, visionaries, imams, or gurus have been vouchsafed with the truth which only they possess and which the rest of us would be foolish, indeed, criminal, to question. History tells us that this is not the world we live in. Self-proclaimed truthers have repeatedly been shown to be mistaken — often comically so — by history, science, and common sense. Perhaps the greatest discovery in human history — one that is prior to every other discovery — is that our traditional sources of belief are in fact generators of error and should be dismissed as grounds for knowledge. These include faith, revelation, dogma, authority, charisma, augury, prophesy, intuition, clairvoyance, conventional wisdom, and subjective certainty. How, then, can we know? Other than by proving mathematical theorems, which are not about the material world, the answer is the process that the philosopher Karl Popper called conjecture and refutation. We come up with ideas about the nature of reality, and test them against that reality, allowing the world to falsify the mistaken ones. The “conjecture” part of this formula, of course, depends upon the exercise of free speech. We offer these conjectures without any prior assurance they are correct. It is only by bruiting ideas and seeing which ones withstand attempts to refute them that we acquire knowledge. Once this realization sank in during the Scientific Revolution and the Enlightenment, the traditional understanding of the world was upended. Everyone knows that the discovery that the Earth revolves around the sun rather than vice-versa had to overcome fierce resistance from ecclesiastical authority. But the Copernican revolution was just the first event in a cataclysm that would make our current understanding of the world unrecognizable to our ancestors. Everything we know about the world — the age of our civilization, species, planet, and universe; the stuff we’re made of; the laws that govern matter and energy; the workings of the body and brain — came as insults to the sacred dogma of the day. We now know that the beloved convictions of every time and culture may be decisively falsified, doubtless including some we hold today. A **third reason that free speech is foundational to human flourishing is that it is essential to democracy and a bulwark against tyranny. How did the monstrous regimes of the 20th century gain and hold power? The answer is that groups of armed fanatics silenced their critics and adversaries. (The 1933 election that gave the Nazis a plurality was preceded by years of intimidation, murder, and violent mayhem.) And once in power, the totalitarians criminalized any criticism of the regime. This is also true of the less genocidal but still brutal regimes of today, such as those in China, Russia, African strongman states, and much of the Islamic world. Why do dictators brook no dissent? One can imagine autocrats who feathered their nests and jailed or killed only those who directly attempted to usurp their privileges, while allowing their powerless subjects to complain all they want. There’s a good reason dictatorships don’t work that way. The immiserated subjects of a tyrannical regime are not deluded that they are happy, and if tens of millions of disaffected citizens act together, no regime has the brute force to resist them.** The reason that citizens don’t resist their overlords en masse is that they lack common knowledge — the awareness that everyone shares their knowledge and knows they share it. People will expose themselves to the risk of reprisal by a despotic regime only if they know that others are exposing themselves to that risk at the same time. Common knowledge is created by public information, such as a broadcasted statement. The story of “The Emperor’s New Clothes’’ illustrates the logic. When the little boy shouted that the emperor was naked, he was not telling them anything they didn’t already know, anything they couldn’t see with their own eyes. But he was changing their knowledge nonetheless, because now everyone knew that everyone else knew that the emperor was naked. And that common knowledge emboldened them to challenge the emperor’s authority with their laughter. The story reminds us why humor is no laughing matter — why satire and ridicule, even when puerile and tasteless, are terrifying to autocrats and protected by democracies. Satire can stealthily challenge assumptions that are second nature to an audience by forcing them to see that those assumptions lead to consequences that everyone recognizes are absurd. That’s why humor so often serves as an accelerant to social progress. Eighteenth-century wiseguys like Voltaire, Swift, and Johnson ridiculed the wars, oppressions, and cruel practices of their day. In the 1960s, comedians and artists portrayed racists as thick-witted Neanderthals and Vietnam hawks and nuclear cold warriors as amoral psychopaths. The Soviet Union and its satellites had a rich underground current of satire, as in the common definition of the two Cold War ideologies: “Capitalism is the exploitation of man by man; Communism is the exact opposite.” We use barbed speech to undermine not just political dictators but the petty oppressors of everyday life: the tyrannical boss, the sanctimonious preacher, the blowhard at the bar, the neighborhood enforcer of stifling norms. **It’s true that free speech has limits. We carve out exceptions for fraud, libel, extortion, divulging military secrets, and incitement to imminent lawless action. But these exceptions must be strictly delineated and individually justified; they are not an excuse to treat speech as one fungible good among many**. Despots in so-called “democratic republics” routinely jail their opponents on charges of treason, libel, and inciting lawlessness. Britain’s lax libel laws have been used to silence critics of political figures, business oligarchs, Holocaust deniers, and medical quacks. Even Oliver Wendell Holmes’s famous exception to free speech — falsely shouting “Fire!” in a crowded theater — is easily abused, not least by Holmes himself. He coined the meme in a 1919 Supreme Court case that upheld the conviction of a man who distributed leaflets encouraging men to resist the draft during World War I, a clear expression of opinion in a democracy. And if you object to these arguments — if you want to expose a flaw in my logic or a lapse in my accuracy — it’s the right of free speech that allows you to do so.

### Baffour

#### Microagressions on campus run rampant – this is a form of covert racism.

**Baffour:** Baffour, Perpetual [Perpetual Baffour is a Research Assistant for the Education Policy team at the Center for American Progress.] “When Racism Erupts On College Campuses.” Generation Progress. December 2016. RP

**Since the November presidential election, a number of racist incidents have erupted on college campuses. At the University of Pennsylvania, a group of Oklahoma-based students created a GroupMe account Ntled “N\*\*\*\*r Lynching” and added numerous black freshmen to the account. The perpetrators then signed their hate speech with the name “Daddy Trump.” Another black female student at Villanova University was assaulted by a group of Trump supporters during the supporters’ victory march**. In Massachusetts, a group of white male students drove through the Wellesley College campus in a Trump flag-bearing vehicle, then spat at a black student nearby. **The recent spike in racial hate crimes is alarming. But it’s also a painful reminder that a college education offers no guarantee that graduates will exhibit tolerance, acceptance, or empathy toward those deemed “different**.” College can be a remarkably formaNve experience for young people. While attending college, students are often shaping their sense of self and crystallizing their worldview. They’re navigating their identity across multiple domains of race, gender, religion, spirituality, and heritage. In many cases, they’re also being exposed to new cultures and identitis that they may not have previously been exposed to. However, my own experience as a daughter of immigrant parents, attending an Ivy League university, taught me that racial unity in college is no organic, guaranteed process. Worse, students can graduate from elite universities and carry the same prejudicial actudes they had when they first entered as freshmen. **While attending the University of Pennsylvania, I witnessed my peers—some white, some non- white—exhibit racism in both overt and subtle ways. For instance, in the spring semester of my senior year, the local chapters of the Chi Omega sorority and Beta Theta Pi fraternity organized an invite-only “gangsta-themed” party**, encouraging a:endees to don costumes that mock and exploit lower-income residents in Philadelphia. The following semester, the nearly all-white male chapter of the Phi Delta Theta fraternity distributed a holiday card in which they posed next to a black-faced blow-up sex doll. My experience is far from unique. Similar incidents have been taking place at colleges and universiNes across the country for decades. **But perhaps just as important is the fact that there’s a process of “dismissal and denial” that usually takes place following these events. In these instances, when black students voice their demands for a safer, more inclusive space, our interests are cast as illegitimate. Black students are told that they are being overly dramatic, or are advised to “get over” their direct experiences with racism. And then there are microaggressions, the everyday interactions that communicate negative, hostile messages. For example, when I was admitted into the University of Pennsylvania, one of my peers snorted that the only reason I got in was because I was black.** Another peer asked, “What was your SAT score?” **These snide jokes and invasive questions ultimately boiled down to the question: Do you really belong here?** The answer should be, unequivocally, yes. However, these subtle jabs demonstrate a serious ignorance of the achievements, contributions, and diversity of black students. From the Southern progressive Christian to the Sudanese refugee, black students offer much more to college campuses than their skin color. One of the gifts of my college experience was my exposure to the diversity in our intellectual beliefs, religious philosophies, and cultural upbringings. In fact, many black people in America juggle multiple, intersecting identities. Many African Americans are also LaNno, Muslim, immigrants, undocumented, women, and/or LGBTQ. For the queer black man, the Jamaican-American young woman, or the undocumented Senegalese Muslim, the racist events spurred by this year’s election raise serious quesNons of “Who am I? Do I really belong?” I witnessed many of my friends carry these quesNons with them to class, in their interacNons with peers and faculty, and in their dreams and ambiNons for post-college life. To be clear, college can be a posiNve and rewarding experience. It certainly was for me. It is also promising that many colleges and universities have been swi\_ in their response to the recent incidents. For instance, I am proud that Penn denounced the GroupMe perpetrators and has displayed solidarity with the affected students. All university administrators should be this forthright in condemning racial hate crimes. However, creaNng inclusive campuses will require more than an eloquent press release. It requires officials to recognize the danger in silence and complicity, long a\_er the controversy dies down. Even when it is not garnering headlines, race sNll defines many students’ daily lives. U.S.-born black students, who have long muscled their way through racism, are confronNng it yet again. InternaNonal black students, who have just arrived in this country, are gecng their first taste of what it’s like to have dark skin in America. In this new Trump world, the historical legacy of race and racism has become even more visible. Unfortunately, we cannot escape the social mechanisms that sort us by race. But colleges and universiNes can no longer afford to sit idly by while some feel emboldened by the racist rhetoric now deemed presidenNal. We cannot wait unNl ignorance spirals into hate. And we cannot wait unNl implicit bias turns into explicit violence. **After all, people of color cannot escape racism, not even at institutions of higher learning**

### Hartocollis and Bidgood

#### Campus protests using free speech are the only solution to entrenched racism – Black people can’t just rely on the state to solve hate speech – solutions must come from their own communities.

**Hartocollis and Bidgood:** Anemona Hartocollis and Jess Bidgood [Contributors, The New York Times] “Racial Discrimination Protests Ignite at Colleges Across the U.S.” *The New York Times.* November 2015. RP

**The passion that ousted the heads of the University of Missouri after protests over racial discrimination on campus is spreading to other colleges across the country, turning traditional fall semesters into a period of intense focus on racial misunderstanding and whether activism stifles free speech. Hundreds of students demonstrated at Ithaca College in upstate New York on Wednesday, demanding the resignation of the college president, Tom Rochon, for what they said was his lackluster response to complaints of racial insensitivity on campus, including an episode in which two white male alumni on a panel called a black alumna a “savage,” after she said she had a “savage hunger” to succeed. At Smith College, in Northampton, Mass., about 100 students demonstrated in solidarity with their counterparts in Ithaca and Missouri, while at the University of Kansas, the administration called a town hall meeting to give students and faculty a chance “to be heard” before any concerns about race on campus could grow**. At Claremont McKenna College in California, the junior class president resigned Tuesday after a furor over a Facebook photograph that showed her posing with two women who were wearing sombreros, ponchos and mustaches for Halloween. A campus demonstration followed on Wednesday. And at Yale, the campus is still in turmoil about an overheard “white girls only” remark at an off-campus fraternity party, and debating over whether students had a right to wear transgressive Halloween costumes. **In interviews, students say they have been inspired by the Black Lives Matter movement that grew out of the fatal shooting of Michael Brown by the police in Ferguson, Mo. They say the victory of protesting students and football players at the University of Missouri has spurred them to demand that their universities provide a safe space for students of color.** In New Haven, Aaron Z. Lewis, a 21-year-old senior at Yale, used to spend his days studying cognitive science and thinking about what he will do after graduation. Now he is devoting his time to protesting and writing about racial injustice, particularly for black women, on campus and elsewhere. Mr. Lewis and other students said the racism they had experienced or observed was often subtle rather than blatant, but no less disturbing and no less deserving of attention. “I don’t think it matters what my own personal experiences are with this,” Mr. Lewis said. “What matters is that we all need to have empathy for the experiences that people of color have even if we don’t have those experiences for ourselves.” He added, “It really is hard to believe because we want to believe that we’re a postracial society, but it’s just not true.” At Smith, the protesting students gathered at noon in a tight circle, with umbrellas and parkas to shield them from the afternoon’s spitting rain. Some had left classes 10 or 15 minutes early. “Systematic oppression affects us all,” said Tyahra Angus, a senior, speaking through a megaphone to the group, a mix of minority and white students. The environs were a far cry from the University of Missouri. Smith’s undergraduate student body is all women and the institution itself is situated in a progressive college town. It is not in the midst of major upheaval. **But the students who gathered on Wednesday spoke of “microaggressions” — tone-deaf slights directed toward minority students — and continuing difficulties of being a student of color on a contemporary college campus, and encouraged their peers to raise awareness of them. “It’s the microaggressions in classrooms,”** Raven Fowlkes-Witten, a junior who organized Wednesday’s demonstration, said in an interview. “It’s students not feeling represented. It’s few faculty members of color,” As Ms. Fowlkes-Witten addressed the group, she stood under an umbrella held by Donna Lisker, the dean of the college. **“I don’t think I ever want to fall into a false sense of security that things can’t happen here**,” Ms. Lisker said in an interview after the demonstration, adding, “Being continually reflective about what you’re doing, and listening — that’s why I went today.” At Ithaca, one of the issues is the on-campus panel on Oct. 8, in which Tatiana Sy, a 2009 graduate, said she had a “savage hunger” to do everything in college. Another panelist, J. Christopher Burch, the chief executive of Burch Creative Capital who is also an alumnus, responded, “I love what the savage here said,” according to YouTube clips of the event. The moderator, Bob Kur, a former NBC News correspondent, joined in, pointing to Mr. Burch, saying, “You are driven,” and pointing to Ms. Sy and saying, “You’re the savage.” The men are both white, and Ms. Sy describes herself as Afro-Cuban. When Ms. Sy objected, Mr. Burch said, “It’s a compliment.” Mr. Burch later apologized. Ms. Sy, the special events director for the Downtown Ithaca Alliance, said in an interview on Wednesday that she had been uncomfortable because Mr. Burch had continued to refer to her as “the savage” even after she reminded him what her name was. “You could sense that there was an energy in the room that everyone was uncomfortable with,” she said. Nalani Haueter, 19, a sophomore and sociology major at Ithaca from San Luis Obispo, Calif., said Wednesday that she has been shocked by the numbers of people participating in protests and meetings. “Throughout the last couple of months,” she said, “it’s grown into a large percentage of this campus being active and paying attention.” In a statement Wednesday, Tom Grape, the chairman of the Ithaca College board, said the trustees took the issues seriously and would work with Mr. Rochon to address them. Mr. Rochon, who attended Wednesday’s protests, has promised changes, including the hiring of a diversity officer and the creation of a review board for complaints about the campus police. In a campus email, the president of Claremont McKenna College, Hiram E. Chodosh, said, “I stand by our students,” and announced steps including a new leadership position on diversity and help for new students, especially first- generation college students, in adjusting to campus life. Mr. Chodosh said in an interview that one role of higher education was “to provide a very special home for our students as a bridge from their families to the truly adult and independent world.” Roger Lopez, 19, a sophomore studying political science at Yale who grew up in New York City, said some students had been so upset and consumed by recent events that they had asked for extensions on major papers or exams. Students had even started questioning whether it was appropriate to call the leaders of the university’s residential colleges “masters,” because they thought the term had connotations of slavery.

### McElwee

#### The more insidious forms of racism are covert – it’s not just people saying racial slurs but microaggressions that their heavy-handed speech codes gloss over.

**McElwee:** McElwee, Sean [Sean McElwee is a research associate at Demos. He lives in New York City.] “The hidden racism of young white Americans.” PBS Newshour. March 2015. RP

**One of the underlying problems is that most Americans, but particularly Millennials, have a very confined view of what racism is. Americans think of racism as Bull Connor or the Ku Klux Klan, but today, racism is far more likely to be embedded in institutions. Modern racism isn’t cross- burning (though that still happens.) It’s the Texas Department of Housing and Community A airs only approving tax credits for housing in neighborhoods that are majority people of color and denying the credits in neighborhoods that are majority white (a case the Supreme Court will take up this year). And while the Ferguson Police Department certainly contained racists, the more pervasive problem was a systematically discriminatory method of policing that preyed on people of color**. Age tells us far less about an individual’s likelihood of expressing racist sentiments than factors like education, geography and race. It is beyond dispute that the United States contains deep structural racial issues. **These racial disparities are perpetuated not only through explicit discrimination, but through the power of history**. For instance, black and Latino children are far more likely to grow up in poor neighborhoods, stinting upward mobility. Black and Latino men are disproportionately caught up in mass incarceration, which a ects their families and their earning for a lifetime. A new report by Demos and Brandeis University finds that equalizing college graduation rates between whites and people of color would close the wealth gap by 1 percent for blacks and 3 percent for Latinos. A recent study helps explain why: Michael Gaddis finds blacks who graduated from elite universities have the same chance in the job market as whites who graduated from less selective schools. In addition, black graduates are o ered lower starting salary and less prestigious starting jobs. The reaction to the SAE scandal, and numerous other events over the past few years (Donald Sterling and Paula Deen, for example) suggest that our society can accurately identify and shame explicit racial animosity. But addressing the structural racism that plagues our society will be far more di icult, mainly because most Americans aren’t attuned to it. Even progress can entrench structural racism. In the wake of President Obama’s election, political scientists Nicholas Valentino and Ted Brader found that Americans, particularly young Americans and white Americans, were less likely to perceive racial discrimination than they were before. Further, University of Michigan professor Vincent Hutchings found that “blacks and whites remain as far apart on racial policy matters in 2008 as in 1988.” In the long term, Americans need to grapple with our history and how it continues to a ect us today. Matthew Blackwell, Avidit Acharya and Maya Sen find that whites in areas with a high concentration of slavery are to this day more likely to espouse racially biased attitudes. Therefore, waiting for a mass opinion change may take decades (if it occurs at all). **Similarly, waiting for old whites to die out won’t solve the problem, as these attitudes are equally prevalent among youth.** Demographic change may lead to a more diverse nation, but this will take half a century, and white hegemony has a way of shi ing to accommodate new realities. Racial justice must include more deeply integrating our neighborhoods to give everyone equal opportunity. In addition, such integration will decrease racial animosity. Mass incarceration and racially-biased policing tactics must be ended immediately. The need to close the funding gap between majority white schools and schools that are majority students of color, as well as the gap between rich schools and poor schools should be immediately obvious. A baby bond program could ease not just the racial wealth gap, but the deep-class divide in asset ownership. And any racial justice policy must include full employment. These programs need not be framed as part of a racial justice agenda. Rather, they are part of an opportunity agenda, for all Americans, white, Black or Latino.

### Cooper

#### Trying to solve racism through external policies fails – racism is internalized and psychological

**Cooper:** Cooper, Brittany [Dr. Brittney Cooper is Assistant Professor of Women’s and Gender Studies and Africana Studies at Rutgers University.] “We treat racism like it’s going extinct. It’s not.” *PBS Newshour.* March 2015. RP

**Recent polling data also indicate that white Millennials are nearly as likely as their parents (61 percent to 64 percent respectively) to believe that white people are harder working and more intelligent than African-Americans. The paradox of progress, as historian Jelani Cobb calls it, is that these negative racial attitudes persist among young white Americans even though they are the same generation that played a pivotal role in the election of Barack Obama to the presidency.** But it is important to recognize that mainstream acceptance of exceptionally accomplished black people is not an accurate indicator of the racial attitudes of the general populace. **Recently, young fraternity members at the University of Oklahoma were caught on video singing a chant that copiously used the N-word, proclaiming that there would never be one in their fraternity. Two students were expelled, and we were treated to the requisite white American morality tale of shock, disavowal and denouncement. The problem is that these incidents happen every year**. In fall 2013, a white sorority at the University of Alabama rejected two pledges of color seemingly solely on the basis of race. Moreover each year, we hear stories of fraternities and sororities and other campus groups throwing race-themed parties that tra ic in stereotypes about African-Americans and Latinos. **The shock and surprise from white Americans about these continued incidents baffles me. These clear racist and racially-tinged occurrences happen with a kind of quotidian regularity.** The question is why we think the problem of racism is an evolutionary problem rather than an ideological one**. We treat racism as though it is the contained characteristic of a specific species of human beings known as racists, that lived in a prior era of American history, but have now nearly become extinct. We keep missing that racism is ideological and institutional, rather than merely individual. Or we treat racism like an outmoded technology, hoping that it will go the way of the rotary phone**, the cassette tape and the VCR. We keep missing that racism is the message, not the medium. The message more specifically is antiblackness and white supremacy. These messages have never been properly addressed or even remotely dismantled, and this is why they persist despite the medium. Such messages adapt to new media and new technologies — be they digital technologies or social phenomena like gentrification, segregation, over-policing and mass incarceration, which perpetuate the fundamental message of racism, namely black inferiority. These messages — about racism and antiblackness and white supremacy — persist because they resonate. Such messages mark who belongs and who doesn’t, who is worthy of America’s promise and who is not, who is worthy of our national empathy, care, and resources and who isn’t. Millennials have grown up in a world marked by these messages. And we have come of age and reached young adulthood in a struggling economy, with a shrinking middle-class, rising college costs, and limited job opportunities. When resources are scarce in this way, the old messages about who is worthy resonate and often come to predominate. Despite this dismal picture, I still think Millennials have a chance to shift the generational narrative on racism. Young black Millennials and Millennials of color have taken to the streets proclaiming a new message — Black Lives Matter. Unbowed by the recalcitrant racial attitudes of their white Millennial counterparts, these young people of color are demanding that America change, demanding a dismantling of the social technologies of racism, demanding that black lives be treated with value. And I believe that we will win.

### Kabbany

#### Controversial ethnic plays about oppressed groups contribute positively to scholarship and fight dominant Eurocentric norms.

**Kabbany:** Kabbany, Jennifer [Contributor, The College Fix] “Controversial Native American play, not Columbus, sparks campus ‘indigenous’ day.” The College Fix. October 2014. RP

**Today UC Berkeley will mark its third annual “Indigenous People’s Day Celebration” – the same day as the federal Columbus Day observance. The university has for years shunned Columbus Day celebrations, and in the past the campus community has openly protested the holiday and helped take part in the city of Berkeley’s annual Indigenous Peoples Day activities**. More recently, the university has put on its own festivities to mark the occasion, and [today](http://events.berkeley.edu/index.php/calendar/sn/diversity.html?event_ID=82752&date=2014-10-13) will offer performances, lectures and other activities. **The effort is a collaboration between several campus groups, including the UC Berkeley department of theater, dance and performance studies, the American Indian Graduate Student Association, and the equality and inclusion department. But it was not a hatred for Columbus that served as the impetus for the annual campus observance. The university observance was prompted, interestingly enough, by a controversial Native American-themed play at the campus in the spring of 2012 that some students felt offered an “inaccurate and harmful depiction of Native American culture**,” The Daily Californian student newspaper [reported](http://www.dailycal.org/2013/10/14/uc-berkeleys-2nd-annual-indigenous-peoples-day-recognizes-native-american-history-and-culture/). **That historical-fiction play, “Ishi: The Last of the Yahi,” was put on by the UC Berkeley Department of Theater, Dance and Performance Studies**. The Yahi band had lived near Gold Rush territory, and prospectors and settlers killed many, and seized their land and rivers, where they fished for salmon to survive on, [according](http://www.weareca.org/index.php/en/era/precontact/yana_yahi.html) to We Are California. “In 1871 the handful of surviving Yahi fled to the Sierra foothills, where they lived hidden in the mountain wilderness for 40 years,” the website states. “The last known member of the Yahi walked out of the hills in August 1911. He became known as ‘Ishi’ (meaning ‘man’), the ‘last of the Yahi.’ Ishi lived for five more years and died in 1916.” Ishi has often been referred to as “the last wild Indian,” and when he stumbled out of the wilderness those decades ago he immediately became the center of attention and study. “**The play, according to the department’s website, explores the life of Ishi, the last remaining member of the Yahi tribe, and his time as an object of study at the campus Hearst Museum of Anthropology with anthropologist Alfred Kroeber beginning in 1911,” the Daily Cal** [**reports**](http://www.dailycal.org/2012/03/14/campus-production-triggers-concerns-from-american-indian-community/)**. Berkeleyside.com described the play like** [**this**](http://www.berkeleyside.com/2012/03/08/uc-presents-a-searing-play-about-ishi-the-last-of-his-tribe/)**: It is an entertaining, although deeply disturbing, play, filled with scenes of prejudiced white men massacring Indians for a $5-a-head state bounty, gunfire, rape, murder, cannibalism, and even academic jealousy**. But if you are shocked and disturbed after seeing it, (and at three hours long, you see a lot) then … the artistic director of Theater Rhinoceros in San Francisco and a frequent lecturer in the theater department, will have attained his goal. He clearly wants to tell people about this unknown chapter of California history: that the slaughter of Native Americans also happened here, not just at Wounded Knee or on the Trail of Tears. **But the play was met with harsh criticism, including a review**[**described**](http://nativeappropriations.com/2012/03/ishi-the-last-of-the-yahi-a-uc-berkeley-production-that-perpetuates-gross-violences-against-native-peoples.html) **on NativeAppropriations.com as follows: … Ishi: The Last of the Yahi … attempts to justify the gross violences committed against Native peoples through its portrayal of Ishi as a batterer, murderer, and rapist.** While arguably the production evidences some meager attempts to provide a more nuanced version of history, ultimately, the play endeavors to erase not only Ishi, but also all Native peoples, who through the production’s monolithic representation of Native Americans are conflated with the Yahi. When the play is not depicting Native peoples as extinct, it suggests that Native Americans are not “survivors” or “victims,” but instead, were asking for it: “Maybe Manifest Destiny was a two-way street.” **A petition tried to get the show cancelled, and it was signed by 393 people, but ultimately failed to shut it down,**[**according**](http://www.ipetitions.com/petition/cancelishiplay/) **to iPetitions.com.** The department chair of the theater, dance and performance studies quickly retreated from the play’s subject matter after the blow back. “I don’t think we expected the reaction that we got,” he [told](http://www.dailycal.org/2012/03/14/campus-production-triggers-concerns-from-american-indian-community/) The Daily Cal. “We consider that an oversight on our part. We should have been more sensitive and vigilant about the subject matter.” **After that, UC Berkeley’s annual “Indigenous People’s Day Celebration” was created. It’s held inside a dance studio on campus. This year it will feature a hoop dance, cultural presentation, language and story telling, and other discussions. “Rather than Columbus Day, this is a movement to recognize indigenous people,” a grad student** [**told**](http://www.dailycal.org/2013/10/14/uc-berkeleys-2nd-annual-indigenous-peoples-day-recognizes-native-american-history-and-culture/) **The Daily Cal in 2013 about the annual tradition. “It’s about recognizing these cultures rather than the defeat of these cultures.”**

### Fawcett

#### Controversial campus theater lets students feel that they have a role to play in development of ideas – it’s key to authentic student voices – Santa Clara proves.

**Fawcett:** Fawcett, Madeleine [Writer, The Santa Clara Newspaper] “Despite Controversy, “Welcome to Claradise” Illuminates Student Voices.” *The Santa Clara.* March 2017. RP

**The new on-campus play Welcome to Claradise has been pretty controversial, as many people involved in the Santa Clara community are aware.  The play**[**focuses**](http://thesantaclara.org/welcome-to-claradise-highlights-past-and-present-campus-discrimination/)**on the campus’ reaction to hateful vandalism that occurred in Casa Italiana Residence hall last quarter. In October, 2016, two students drew a swastika in blood in a residence hall elevator and wrote anti-LGBTQ slurs on a poster in the fourth floor hallway.** The play also touches upon the vandalism of the 43 Students Memorial at the beginning of fall quarter.  The show illuminates the reality of life at Santa Clara—much of the script is built around interviews that the production team conducted with members of the campus community. **These interviews tell the stories of discrimination on campus, describing rape culture at Santa Clara and the casual use of racist, sexist language between students. However, many students have criticized the play’s approach**. The cast lacks diversity and the production team failed to interview important campus leaders from groups like the MCC, Unity 4 and the Ethnic Studies program, among others.  When I first heard about the opposition to the play, I was torn. **I wanted to hear the stories Welcome to Claradise promised to tell. I wanted to learn how the swastika drawn in blood and the vandalism of the 43 Students Memorial impacted people besides my immediate friends and myself. I wanted to support the cast and the crew, who I knew were committed to their mission and to the stories they had collected**.  But I also wanted to support the students whose voices had been left out of the play. If I went, would it mean I didn’t understand or care about the significant objections these students had raised?  I know the internal conflict and confusion I experienced was not unique. I have friends who also debated whether or not to go, and some who ended up choosing not to. Ultimately, however, I did decide to go and I’m glad I did.  **From interviews acted out by the cast, I heard how the blood swastika affected different members of the Santa Clara community, including people living in Casa Italiana and several Jewish students. I learned how the homophobic slurs impacted a closeted student leader.** I heard about how prejudice and racism presided over a black female student’s first week of freshman year. I saw (and related to) how sexism and violence against women impact the daily lives of other female students on campus. While I believe the criticism of this play is important, **I think those who choose not to see the Welcome to Claradise are missing out on an important opportunity to hear student voices**.  I agree that the cast’s lack of diversity and the production team’s failure to interview several important campus leaders is problematic. **However, the stories told in this play are about real members of our community: their experiences, struggles and concerns**. Every interview contained a unique message about individual student experiences at Santa Clara. And if I hadn’t seen Welcome to Claradise, I wouldn’t have had the opportunity to hear and learn from these student stories at all.  The play debuted on Friday, March 10. It will run from Wednesday, March 15 to Saturday, March 18 in the Louis B. Mayer Theatre—performances are at 8 p.m. each night. You can purchase tickets for showings of Welcome to Claradise [here](https://red.vendini.com/ticket-software.html?t=tix&e=1e0f86c9070f423dc81b58647d62503f).  The March 15 performance is a free arts appreciation event, so use the code ARTSAPPRECIATION to obtain free tickets for the show.

### Denver Post

#### Firing and banning racist professors causes massive public backlash and misdiagnoses the problem.

**Denver Post:** The Denver Post [Newspaper located in Colorado] “A Denver doctor’s racist comments shouldn’t have led to her firing.” *The Denver Post.* December 2016. RP

There is no doubt that the hard-fought 2016 presidential election contest, and the nasty rhetoric from the president-elect and others, has led to increased instances of and focus on hate crimes and hateful speech across the land. **In Denver this week, the poisoned atmosphere became even more noxious thanks to a Facebook post from an individual one would think would know better: a University of Colorado School of Medicine faculty member and pediatric anesthesiologist. We bring it up not to fan the flames of public outrage — although we share that outrage. Rather, we’d like to offer a word or two of caution, and to make an appeal for calmer minds. Yes, it was racist and abhorrent — and just plain stupid** — for Dr. Michelle Herren to say of First Lady Michelle Obama: “Monkey face and poor ebonic English!!! There! I feel better and am still not racist!!! Just calling it like it is!” Herren was swiftly terminated by the University of Colorado, and Friday afternoon Denver Health released a statement saying Herren had volunteered to end her employment there as well. But before we celebrate Herren’s loss as a win for common decency, let’s take a moment to mourn the other cost. **Public shaming of viral social media posts has become the new “chilling effect” of free speech that libel and defamation lawsuits were before the nation’s highest courts spoke and set strong precedents protecting all types of speech — including burning the American flag. The argument for Herren’s termination exists within case law**. Public employees, unlike private workers, fall under a different set of free speech rules that continue to evolve. As Steven Zansberg, a First Amendment attorney in Denver, who is also the president of the Colorado Freedom of Information Coalition, tells us: “Public employees do not relinquish their First Amendment right to express their views on matters of public concern, so government employers must tread lightly before punishing such speech.” However, Zansberg notes that “government employers may take appropriate employment actions against employees whose speech, expressive conduct, or other constitutionally protected activities is shown to ‘undermine the mission of the public employer.’ ” One can see how the doctor’s disgusting and ridiculous remarks (after all, the first lady is obviously beautiful and eloquent) could translate into an untenable position for the medical school. Should students not wish to take her classes, how is the public served by keeping her on the staff? Her role at Denver Health is trickier. Had they sought to terminate her, officials there would have had to argue Herren’s comments made her unable to perform her medical duties at Children’s Health, a position they oversee. But nothing Herren said about the first lady suggests she would exercise poor judgment in her role as an anesthesiologist. **But shouldn’t academic and medical professionals and students be able to handle contrary views? Even those they find abhorrent? Like all of our freedoms, the freedom of speech has a cost**. That cost is that people like Herren can have their soapbox on Facebook, or the Ku Klux Klan can march down Main Street, and those who are protesting the Dakota Access Pipeline can burn the very symbol of the freedom they are exercising. **We can condemn these actions in no uncertain terms and still respect that the right to do them is one we cherish and will not undermine in moments of disgust and anger. Herren losing her livelihood may feel like justice now, but it’s a slippery slope we hope doesn’t start to cascade.**

### Davidson

#### Minority faculty and research on campus has a snowball effect – more minorities will become faculty and educate students

**Davidson:** Davidson, Dr. Martin [Professor and writer] “On the importance of minority faculty.” *Leveraging Difference.* February 2011. RP

I was recently asked to answer a series of questions on why it is important to have minority faculty represented at business schools. While it seemed like the answer to the question would be obvious, I was happy to go through the exercise, and found that it may not be as straightforward as one might think. **Minority representation among our faculty is essential because we know that being competitive in the global business school market means getting smarter and smarter about how we create high quality learning for an increasingly diverse student body.   Having excellent minority faculty means that we are better able to leverage the diversity of background and perspective among all of our faculty colleagues to create that high quality learning environment**.  Here are a few examples: a) Our faculty collaborate extensively in teaching.  In our teaching meetings, everything from the selection of cases to the pedagogy we use to teach our students is informed by the multiple perspectives of our faculty teams, many of which are racially and culturally diverse. b) **In the classroom itself, our minority faculty serve as role models, not only for our minority students, but also for our majority students.  Students and typically build strong learning relationships together and when the faculty member is a minority, students are exposed to perspectives that expand their models of who they can learn from. c) Our faculty collaborate extensively in conducting cutting-edge research**.  Our minority and majority faculty work together to produce new research ideas that contribute to academic scholarship and to our mission of informing practicing managers.  For example, I’m working with a colleague on a new research project explaining what prevents organizations from developing minority and women managers sustainably. **I can’t help but reflect back twelve years ago when I came to Darden from Tuck as the only minority faculty member at Darden. In twelve years since, five more minority faculty have joined our faculty (raising our percentage of minority faculty well above industry averages).  More significant, five of the six minority faculty member at Darden have earned tenure** (the sixth is a junior colleague) and all continue to thrive at the institution.  The absolute numbers are impressive; the retention is remarkable. This success has been achieved for several reasons: 1) the three deans who have led Darden during the past twelve years have consistently supported the hiring of minority faculty; 2) our current dean, Bob Bruner, has overseen the promotion of 4 of the 5 tenured faculty at Darden; 3) the school—faculty, students, and administration—has embraced eagerly the trend toward increased diversity among faculty.  Most important, the environment at Darden is welcoming. I’m afraid there is likely to be a shortage of minority faculty in top 20 business schools and in international business schools because networks that provide talent to these institutions have not yet been widely opened to U.S. minorities. So one of the most important goals 21st century business schools must achieve is to develop and transform their way of doing business education;  business schools have to be “fluent” in diversity because our global stakeholders—students, recruiters, faculty, alumni, donors—are demanding this of us.  U.S. minority faculty have a critical role to play in helping business schools gain this fluency. **Together, members of a culturally diverse faculty can create “laboratories” to help everyone learn how to build processes and organizational cultures that better produce relevant, high quality business education.**

### Haubt

#### Limits on revenge porn are paternalizing, don’t work, and thwart feminist movements

**Haupt:** Haupt, Claudia E. [Law Clerk, Cologne, Germany. Erstes Juristisches Staatsexamen (E.J.S) (J.D. equivalent), University of Cologne, Germany; M.A., State University of New York at Albany.] “REGULATING HATE SPEECH - DAMNED IF YOU DO AND DAMNED IF YOU DON'T: LESSONS LEARNED FROM COMPARING THE GERMAN AND U.S. APPROACHES.” *Boston University International Law Journal.* Fall 2005. RP

\*\*\*Bracketed for offensiveness

The libertarian arguments protective of the First Amendment parallel those made by traditionalists in the campus speech code debate and will be illustrated in that context. **Nadine Strossen, for examples, argues against free speech restrictions based on her interpretation of First Amendment doctrine. She confronts MacKinnon in the context of feminist discours**e. n60 Strossen argues that numerous works of special value to feminists would inevitably be subject to the kind of regulatory scheme advocated by MacKinnon. **Moreover, some scholars have pointed out that the very groups that were intended to be the beneficiaries of the protective measures - especially feminists and lesbians - would be the ones hardest hit. n61 Thus, censorship would promote a multitude of reactions counterproductive to the cause. n62 It would perpetuate demeaning stereotypes, including that sex is bad for women, and the disempowering notion that women are [targets] ~~victims~~. Strossen also suggests that the proposed legislation would distract people from working towards eliminating gender-based discrimination and violence through more constructive approaches. Turning to the individual, Strossen contends that women who voluntarily work in the sex industry would be harmed and the efforts of women to develop their own sexuality would be thwarted. On a political level, she states that MacKinnon's proposed legislation would lead to an increased power of the religious right and its patriarchal agenda that would curtail women's rights while depriving feminists of a powerful tool in their struggle to advance women's equality. Similarly, an argument can be made that that laws such as those suggested by MacKinnon, which lead to an in- crease in the state's regulation of sexual images, would present many dangers to women "because they seek to embody in law an analysis of the role of sexuality and sexual images in the oppression of women with which even all feminists do not agree.**" Under this view, an analysis of sexuality as "a realm of unremitting, unequaled victimization for women" is what MacKinnon seeks to impose with the power of the state.

### Yap

#### Theater in schools is key for minority inclusion – it allows them to play a role in how *their history is portrayed*

**Yap:** Yap, Audrey Cleo [Contributor, The Atlantic] “Can Theater Save Minority History in U.S. Classrooms?” *The Atlantic.* June 2016. RP

Earlier this spring, the students at Palms Middle School in Los Angeles gathered in their school’s auditorium, their eyes fixed on the stage before them as a Hamilton-inspired rap battle played out. “My ancestors had a Central Asian persuasion, came to India in what was called the Aryan invasion. This light-skinned group of people would be known as Caucasians when they left to settle down in European locations,” rapped Vinny Chhibber, 36, the actor portraying Bhagat Singh Thind, an Indian American Sikh who fought for U.S. citizenship after serving in the U.S. military during World War I. “Your honor, we don’t debate ancestral unity. And yet we must condemn the way that Thind speaks with impunity,” Steve Humphreys, 43, responded, playing the immigration and naturalization examiner V.W. Tomlinson (among other roles in the two-man cast). The students at Palms Middle—80 percent of whom are Latino, African American, or Asian American—laugh as Chhibber and Humphreys throw down. Singh, as the dialogue between the two actors later shows, would eventually gain citizenship after having it granted and rescinded two times in a case that [went to the Supreme Court](http://faculty.law.miami.edu/zfenton/documents/UNITEDSTATESvBhagatThind_001.pdf).    [The United States vs. Bhagat Singh Thind](http://www.eastwestplayers.org/wp-content/uploads/2013/07/Bhagat-Singh-Thind-Flyer.pdf) is a production of the Los Angeles-based Asian American theater group East West Players (EWP) and its Youth Arts Education program. Since 2005, East West Players has commissioned a playwright each year to produce a work centered on significant Asian Pacific Americans in U.S. history. Past subjects include the Filipino American novelist Carlos Bulosan; the first Chinese American aviator, Katherine Chung; and the first female gunnery officer in the U.S. Navy, the Korean American Susan Ahn Cuddy. The program was started by Marilyn Tokuda, an actress and EWP’s arts education director, who felt theater was an effective conduit for Asian Pacific American history to be presented in classrooms. “It came out of a need and almost an anger of, “Where are we? Why aren’t we represented?” It’s our history,” said Tokuda, who estimates up to 15,000 students—many of whom attend schools in disadvantaged neighborhoods—see the plays annually. Mayank Keshaviah, who wrote The United States vs. Bhagat Singh Thind, said the goal is less about changing the hearts and minds of middle-school students and more about exposing them to the history of minority groups that they may not be getting in the classroom. “It’s not like brown and non-white faces appeared on the scene recently. It’s been there for a while and it’s been part of the building of this country, which is similar to the point of Hamilton. **You’re part of America, you’re part of the history,” said Keshaviah. How minorities are or aren’t represented in U.S. history classes—across all grade levels—continues to be controversial, with some officials not seeing the point of** [**investing in ethnic-studies programs**](https://www.theatlantic.com/education/archive/2016/03/the-ongoing-battle-over-ethnic-studies/472422/) **despite evidence that such programs** [**boost students’ academic performances and attendance**](https://news.stanford.edu/2016/01/12/ethnic-studies-benefits-011216/)**.** Campaigns for including minorities in U.S.-history textbooks have popped up [around the country](http://www.oregonlive.com/portland/index.ssf/2015/11/oregon_ethnic_studies.html). But Eurocentric narratives have persisted, like when a controversial version of the U.S. slave trade popped up in a high-school textbook [published by McGraw Hill](https://www.theatlantic.com/education/archive/2015/10/the-history-class-dilemma/411601/). **Bias and stereotyping against minorities have also become points of contention, like in Texas where one proposed Mexican American studies textbook includes descriptions that link Mexican Americans to illegal immigration, drug trafficking and a desire to** [**“destroy” U.S. society**](http://morning-mix/wp/2016/05/24/proposed-texas)**.** Other examples highlight politics from abroad, like the [current battle](http://www.nytimes.com/2016/05/06/us/debate-erupts-over-californias-india-history-curriculum.html) over proposed edits to California’s middle school history books that would replace “India” with “South Asia” and tie Hinduism to the caste system. Whose version of history makes it into textbooks—and, ultimately, classrooms—can have negative consequences, especially on minority students, as one [graduate-level study](http://fisherpub.sjfc.edu/cgi/viewcontent.cgi?article=1214&context=education_ETD_masters) about textbooks used in suburban high-schools in New York suggested. When minorities are inaccurately or stereotypically portrayed, minority students themselves question the validity of the source material and, at times, the teachers themselves. The study cites research conducted with Japanese American and Mexican American students, among others, in other parts of the U.S.: “The main conclusion which the authors were able to draw was that when minority students become aware they are not being presented with accurate and unbiased information, they will begin to resent the topic, the text, and the teacher.” **Theater, then, has become one avenue through which non-profit groups in California—a state with a** [**62 percent minority population**](http://www.sacbee.com/news/local/article25940218.html) **and one of the most diverse make-ups in the country—ensure students learn about minorities in U.S. history, both past and present. The ramification of pushing a white-dominant historical narrative, argues EWP’s Tokuda, is erasure of minority voices: “The consequences are that no one will care, and we become invisible again**.” Similar initiatives have emerged around the country, like [Red Eagle Soaring Native Youth Theatre](http://redeaglesoaring.org/) in Seattle, which, following [the murder of a Native American woodcarver](http://www.kplu.org/post/woodcarver-fatal-shooting-not-justified-says-seattle-police-board) by a police officer, produced a play in 2011 about the violence Native Americans have historically faced at the hands of law enforcement. [Silk Road Rising](http://www.silkroadrising.org/), a theater group in Chicago that focuses on Asian American and Middle Eastern stories, organizes a [16-week writing program](http://www.silkroadrising.org/pages/epic) for area schools that emphasizes cultural sensitivity, at the end of which students produce an original 10-minute play. But whether these lessons stick is debatable. Many programs, like EWP’s, parachute into schools once a year, making stories about marginalized groups an event rather than endemic to students’ educations. Administrators of the three programs I examined for this story could only cite anecdotal evidence and surveys—self-reported by teachers and students—about the efficacy of their programs. It’s unclear what lasting effect, if any, the programs have had on white students. **Brent Blair, an associate professor of theatre practice at the University of Southern California, sees the potential shortcomings of these initiatives. He specializes in** [**Theatre of the Oppressed**](http://theforumproject.org/whatisto/)**, a set of techniques developed by the Brazilian director Augusto Boal that emphasize audience-performer interaction to promote messages of social change**. He likens the programs to students reading a play about someone who is bullied for being gay, the proposed lessons of which can be limited, even entirely ineffective, depending on how students interact with the material. “There’s no indication that reading that inclusive story in the classroom is going to shift anybody’s perspective except possibly make the class, en masse, collectively grateful that they themselves are not gay,” said Blair. Per the pedagogy of Theatre of the Oppressed, the theater experience, he says, has to be more participatory for the audience in order to generate a lasting sense of empathy for the “oppressed” party, e.g., gay cast members act out a scene then invite audience members to imitate the cast members’ roles onstage and attempt to fight against the bully. “Then the audience members, students in the classrooms, [put] themselves in the shoes of the person and fail against a strong antagonist. The hearts have to be changed in attempting actions before the mind has a strong shift in perspective.” Blair points to several case studies where Theatre of the Oppressed techniques were used, including a community theater project engaging at-risk youth in [South Africa](https://www.griffith.edu.au/__data/assets/pdf_file/0009/114957/06-Chinyowa.pdf) and another one with homeless women in [New Haven, Connecticut](http://www.musicandartsinaction.net/index.php/maia/article/view/theatreopressedhomeless). But he acknowledges that measuring the efficacy of Theatre of the Oppressed techniques is difficult. The case studies, for example, do not show how these productions impacted the community around them and whether they had influenced lasting change. **Homero Rosas, 20, is one actor who is directly connected to the experience he portrays on-stage. The San Francisco-based student is a cast member of** [**In and Out of the Shadows**](http://www.sfyouththeatre.org/InandOutofShadows.html)**, a musical about the Bay Area’s undocumented youth, sometimes known as “**[**DREAMers**](http://www.immigrationpolicy.org/just-facts/who-and-where-dreamers-are)**.” Written by the Chicano poet and novelist Gary Soto and based on hundreds of first-person interviews, the production is the brainchild of the San Francisco Youth Theatre director and composer Emily Klion. A third of the cast is made up of undocumented actors from an array of backgrounds, including Mexican, Filipino, and Guatemalan**. The show is performed at middle schools, high schools, and colleges. “When you’re not a DREAMer, you don’t realize the challenges you’re not facing,” Klion said. Klion first took notice of those issues—including not being able to travel, attend school, or retain work permits—when she tried hiring several students as interns, only to learn that they did not have social-security numbers. Rosas was one of them. “I definitely didn’t know what I couldn’t do because I wasn’t born here, but I knew I wasn’t born here,” said Rosas, who came to the U.S. at age 6. He says his undocumented status has made him fearful of traveling outside of California; in the past 14 years, he says he has only gone as far as Oregon. Growing up, he was astutely aware of his family’s status. “It was more cautionary tales like, ‘Watch out for immigration,’ or ‘[Don’t get in trouble] ‘cause if you get in trouble, they’ll send you back to Mexico and you can’t come back.’ It was very direct.” In the production, Rosas plays “Juan #2,” a light-hearted high-school senior who loves to skateboard. **While initially hesitant to share his own story with Soto and Klion, he ultimately found the experience cathartic and hopes to humanize the plight of undocumented young people like himself**. “People sometimes forget that we are normal human beings that are not documented. That’s the only difference between me and my neighbors, between me and my classmates.” Rosas sees the play as a launching point for discussing the legal purgatory DREAMers find themselves in; Soto does, too. “I would ask our government to answer the question of undocumented youth. What is their legal status? How are we going to weave them into our country?,” said Soto, the playwright. “They’re not going anywhere. They’re here. So how are we going to possibly welcome them in a legal manner? That would be the highest goal [of this production].” California’s immigrant history was also central to L.A. Opera’s in-school residency [program](http://www.laopera.org/Community/Education-and-Community-Engagement/Classroom-Integration/) this year. Adapting the music from Giacomo Puccini’s Turandot, The Legend of Cannery Row is an original operetta set in Monterey, California, and depicts the story of Chinese immigrants as they built up the area’s fishing industry in the 1850s. Stacy Brightman, the senior director of education and community outreach at L.A. Opera, says she saw parallels in Turandot—about a prince who travels to China and falls in love with a princess—with the Chinese American experience of discrimination and rejection. “The unknown prince is a stranger in a strange land. He comes into the kingdom and falls in love with the princess who disdains him. It’s sort of like all the stories of immigrants and all the different ways they heard, ‘I might want your money, I might want your labor, but I don’t want you,’” Brightman said. Opera professionals teach the 10-week program to select L.A. county elementary schools, with students concluding the program by performing the play as chorus singers. Brightman says she deliberately picks works that can resonate with the history of minorities in California to not only reflect the student body of Los Angeles Unified School District—the second largest school district in the country, [almost 90 percent](http://dq.cde.ca.gov/dataquest/Enrollment/EthnicEnr.aspx?cChoice=DistEnrEth&cYear=2011-12&cSelect=1932276--CEA+LOS+ANGELES+CO&TheCounty=&cLevel=District&cTopic=Enrollment&myTimeFrame=S&cType=ALL&cGender=B) of whom are minority students—but also to change the stereotype that opera is an art form exclusively accessible to the old, rich, and white. Next year’s play will be The White Bird of Poston” about the Poston War Relocation Center, a Japanese internment camp housed on the Colorado River Indian Reservation between 1942 and 1945. **The stage, then, has become one place where minority history is not only acted out but also remembered as part of a larger U.S. historical narrative, something history textbook scribes may want to consider since students of color** [**account for more than half**](http://www.edweek.org/ew/articles/2014/08/20/01demographics.h34.html) **of today’s public-school population—and that minority-majority shift is expected to take place for the entire U.S. population within the next few decades. It also highlights the ways history sometimes repeats itself: Bhagat Singh Thind fought for the right to wear his turban during his military service in 1918. A Sikh U.S. Army captain was engaged in—and won—**[**a similar fight**](http://www.cnn.com/2016/04/04/us/sikh-army-captain-simratpal-singh-beard-turban/) **in April. After the showing of the The United States vs. Bhagat Singh Thind at Palms Middle ended, the students peppered the actors, playwright, and director with questions about how they learned their lines, whether they could “feel” what the characters were feeling**. They ask about whether the rap battle actually took place. The answer? It didn’t—at least according to the history books.

### Majeed – Universities Continue to Ignore

#### Counterplan can’t solve – universities just ignore the courts – empirics go Aff

**Majeed:** Majeed, Azhar [Azhar Majeed is the Director of the Individual Rights Education Program at the Foundation for Individual Rights in Education (FIRE). Azhar received a B.A. in Political Science from the University of Michigan in 2004. He is also a 2007 graduate of the University of Michigan Law School, and has been an attorney with FIRE since 2007.] “Universities Continue to Ignore the Lessons of Litigation on Campus Free Speech Zones.” The Huffington Post. December 2013. RP

A student at Modesto Junior College in California who wanted to silently [distribute copies](http://thefire.org/case/930) of the U.S. Constitution to his fellow students — on Constitution Day — was stopped by the police. A student group at the University of Cincinnati looking to [collect signatures](http://dailycaller.com/2012/02/24/right-to-work-students-sue-university-of-cincinnati-over-free-speech-area/) for a statewide “right to work” ballot initiative is threatened with charges. Students and community members at Sinclair Community College in Ohio who merely sought to [hold signs](http://www.daytondailynews.com/news/news/sinclair-students-sue-over-protest-sign-ban-2/nPwZr/) made for a campus rally were told that they must lay them flat on the ground. What do all of these individuals have in common? All of them attempted to take part in clearly protected speech and expressive activity at a public college or university — and all of them were prevented from doing so by the school’s application of a [“free speech zone”](http://thefire.org/article/16243.html) policy. Sadly, these institutions are not alone in violating their students’ First Amendment rights. **Universities** [**across the country**](http://www.huffingtonpost.com/greg-lukianoff/11-student-and-faculty-vi_b_3913959.html) **continue to maintain and enforce unreasonable restrictions on students’ right to protest, rally, demonstrate or even distribute literature**. My organization, the Foundation for Individual Rights in Education (FIRE), [fought such abuses](http://thefire.org/article/16003.html) throughout 2013 and will take the fight into 2014 and beyond, for as long as universities continue to flout the First Amendment. At Modesto Junior College (MJC), student Robert Van Tuinen found himself being denied the right to peacefully distribute copies of the Constitution on September 17. Making matters worse, September 17 was actually [Constitution Day](http://www.senate.gov/artandhistory/history/common/generic/ConstitutionDay.htm)! Apparently oblivious to this fact — and to the basic requirements of the First Amendment — an MJC police officer stopped Van Tuinen and another student as they were handing out copies of the Constitution outside of the student center. A university administrator then told Van Tuinen that the school’s policies required students to register campus events five days in advance and hold them inside a small “free speech area” (pictured below). [As captured in incredible video footage](http://thefire.org/article/16246.html), the official informed him that the designated area is “in front of the student center, in that little cement area.” That particular expression almost perfectly captures the flippant attitude of many university officials toward campus free speech. Too often, student discourse gets treated like a nuisance that, at best, is to be tolerated — not a vital thing deserving to be celebrated. But the official didn’t even stop there; responding to Van Tuinen’s point about the timeliness of Constitution Day, she dismissively stated, “You really don’t need to keep going on.” Okay, then. Fortunately, Van Tuinen brought the matter to FIRE’s attention, and when our [advocacy](http://thefire.org/article/16244.html) did not convince the school to amend its unconstitutional policies and practices, he decided to [file a lawsuit](http://thefire.org/article/16327.html) to vindicate his First Amendment rights. Earlier this month, MJC agreed to suspend enforcement of its free speech zone policy as it negotiated an end to Van Tuinen’s legal challenge. The [joint stipulation](http://thefire.org/article/16588.html) between MJC and Van Tuinen stated that the parties had agreed on several significant revisions to MJC’s policies and procedures to better protect student free speech and open up more of the campus to First Amendment activity. Those revisions are pending final approval by the Yosemite Community College District, expected this spring. Despite this encouraging development, this is not a matter that should have gone to court in the first place. **The public officials in charge of running MJC should have known that the college had violated one of its students’ basic rights. They should have been aware that courts have previously** [**struck down**](http://thefire.org/article/4894.html) **campus “free speech zones” on constitutional grounds.** They evidently realized neither. **Yet just a year previously, a federal court in Ohio** [**invalidated similar restrictions**](http://thefire.org/article/14797.html) **maintained by the University of Cincinnati (UC), another public institution. In that case, members of the UC student group Young Americans for Liberty (YAL) sought to collect signatures on campus in support of a statewide ballot initiative on the “right to work.” However, UC policy limited all “demonstrations, pickets, and rallies” to a “Free Speech Area” comprising just 0.1 percent of the university’s 137-acre West Campus and further required that all expressive activity even in that area be registered with the university a full 10 working days in advance**. When YAL’s leader, Chris Morbitzer, alerted the university to the group’s planned activity, his request was denied. Chillingly, an administrator told Morbitzer that if any YAL members were seen “walk[ing] around campus” gathering signatures, campus security would be alerted. Despite having been warned by FIRE [for years](http://thefire.org/index.php/article/14205.html) about the policy’s constitutional defects, UC was willing to defend its free speech zone in court in Morbitzer’s subsequent legal challenge. That did not turn out so well for the university. In a June 2012 ruling, the federal district court [strongly agreed](http://thefire.org/article/14568.html) with Morbitzer, finding that the policy “violates the First Amendment and cannot stand.” The court ultimately issued a permanent injunction prohibiting UC from reinstating its free speech zone. As though one recent victory in Ohio were not enough, students at Sinclair Community College (SCC) secured [their own favorable result](http://thefire.org/article/15522.html) in a case dating back to last year. In June 2012, the Traditional Values Club student group held a campus rally to protest health coverage mandates from the U.S. Department of Health and Human Services. Incredibly, SCC police declared that no signs of any kind were allowed at the event, and ordered all signs to be placed on the ground. Moreover, when FIRE wrote to point out the legal ramifications (not to mention the abject silliness) of the policy, SCC President Steven Lee Johnson went so far as to say the restriction was necessary because of “safety and security” concerns, invoking the tragic Virginia Tech shootings in 2007 to say that signs could be used as weapons. This type of rationale is not just offensive to First Amendment advocates — it is just downright offensive. As FIRE President Greg Lukianoff said at the time, “It’s outrageous to use the shooting at Virginia Tech to justify a blanket ban on holding signs at protests on a public campus. A ban on signs is an insult to our liberties and has no value in preventing violence on campus.” The story has a positive ending, however, as the students filed a First Amendment challenge and secured a favorable settlement. Under the revised policy adopted by SCC in the wake of the lawsuit, “any person or group may use, without prior notification, any publicly accessible outdoor area” (with some exceptions) for the purposes of “speaking, non-verbal expressive conduct, the distribution of literature, displaying signage, and circulating petitions.” **So if the cases continue to pile up against free speech zones, with Modesto Junior College merely the latest, why do colleges and universities continue to enforce these policies?** [**A 2013 survey**](http://thefire.org/article/16243.html) **by FIRE found that roughly one in six universities maintains some type of free speech zone policy restricting where, when, and under what circumstances students can protest, distribute literature, or otherwise express themselves on campus**. That is far too high a number to be acceptable. **The good news is that** courts have repeatedly made clear that these restrictions are unconstitutional **and indefensible on public university campuses**. As long as students are willing to stand up to their institutions and challenge these policies, they will continue to fall in court. And of course, FIRE will continue to use both [public](http://thefire.org/article/16246.html) and [legal advocacy](http://thefire.org/article/16244.html) against their stubborn existence. It is likely that in 2014, we will see additional campus free speech zones defeated. Students’ First Amendment rights will be better off for it.

### Jacobs

#### Hate crime laws go Aff – they’re frequently enforced in a racist way – outweighs their speculative FBI reports because this gives empirical examples [A2 DNY turn against reverse enforcement]

**Jacobs:** Jacobs, James B. [Contributor, Time Magazine] “Hate Crime Laws Are a Form of Discrimination.” Time Magazine. August 2016. RP

-If they get hate crime evidence, we also get evidence that hate crime prosecution is bad

-Disproves Delgado and Yun – enforcement is never consistent with commission of offense

**Louisiana recently enacted a law defining attacking a police officer as a hate crime. Texas Governor Greg Abbott proposes a similar amendment to Texas’ hate crime statute**. Some critics oppose these laws as watering down the meaning of hate crime, which they say should be reserved for especially powerless or vulnerable persons who are victimized because of their minority group status. While I have been a persistent critic of the hate crime law movement, if there are going to be hate crime laws, anti-police bias should certainly be covered. While hate crime law comes in various shapes and sizes, depending on the particular state or federal version, they generally enhance punishment for crimes motivated at all by widely condemnable biases—the same ones targeted in laws aiming to rectify discrimination in housing, education and employment. **However, unlike in these other contexts, the perpetrators of this criminal discrimination are not members of the power structure. Indeed, they are mostly young men with confused mindsets.** Moreover, the remedy that hate crime laws offer is also different. The victims do not obtain benefits for which they were wrongly denied; rather, their victimizers receive especially severe punishment, usually in jails and prisons that are cauldrons of intergroup, especially inter-racial, conflict and intolerance. **The hate crime law movement re-criminalizes conduct that is already criminal. In effect, it creates a hierarchy of victims—one based upon the group identities of perpetrators and victims, as long as prosecutors can prove a bias motive.** Thus, from the beginning, hate crime laws have simply given us something else to argue about: whose victimization should be punished more severely. They further politicize a law-enforcement and criminal-justice process that does best when it is perceived as being apolitical and even-handed—not a tool of identity politics. Arguments about the kinds of crime victimization that should be defined as hate crime date back to the mid-1980s, when the concept of hate crime was invented. The early hate crime laws focused on criminals with anti-Semitic and anti-black motivation. But they did not initially cover male violence against females. Those who drafted and lobbied for the hate crime laws argued that most male violence against women is motivated by interpersonal conflict, not misogyny, and that to make such crime eligible for hate crime coverage would water down (indeed swamp) the hate crime category. Eventually, politicians rightly rejected that position and added gender bias to the list of those that transform ordinary crime into hate crime. Hate crime law proponents also opposed recognizing racist attacks on whites as hate crime. They argued that when, for example, blacks attack whites it is invariably for economic, not bias reasons. They lost that argument in the courts. **Today, the hate crime laws are often used against African-American perpetrators, perhaps in a small way adding to racial disparities.** Next the battle to hold the line against expansion of the definition of hate crime shifted to sexual orientation bias. **Despite the sordid history of gay-bashing, there was much resistance to treating anti-gay and lesbian bias as a hate crime trigger because, according to the opponents, it would lead to recognition of discrimination against gays and lesbians as worthy of inclusion** in anti-discrimination law generally—in housing, education and the like. Eventually, that twisted thinking was also rejected. **Meanwhile, many other biases were absorbed into various state-level hate crime laws: those based on age, handicap, veteran’s status, political party and family status**. Those who oppose extending hate crime coverage to anti-police crimes of violence will be no more successful than the previous hold-the-line arguments. Politicians will see no advantage in opposing the amendment, especially in light of the recent cold-blooded assassinations of law enforcement officers. Such opposition will be viewed as “anti-police.” (Louisiana's hate crime statute already defined hate crime as an assault "because of [the victim's] actual or perceived membership or service in, or employment with, an organization." The term organization would include anti-police bias. The new amendment just makes this more explicit.) Hate crime laws should be understood as symbolic expressions rather than necessary criminal justice fixes. First they "send a message" in support of victims and the advocacy groups that speak on their behalf that "we stand with you and deplore your victimization." Second, they tell the general public: “Your elected representatives deplore criminals, especially biased criminals.” Third, they say to would-be criminals: “Society regards selecting victims on the basis of some biases as even more deplorable than selecting victims at random or for idiosyncratic reasons.” As Governor Abbott put it last week, “At a time when law enforcement officers increasingly come under assault simply because of the job they hold, Texas must send a resolute message that the State will stand by the men and women who serve and protect our communities.” Hate crime laws are all about expressive politics and not at all necessary for effective and fair law enforcement. Proof is often not easy to come by because offenders usually have mixed and confused motives, and if the crime is committed without epithets or a confession, motivation is difficult to establish beyond a reasonable doubt. (Though adding a hate crime count to an indictment for assault or other crime strengthens the prosecutor’s hand in plea bargaining.) And clearly the U.S. does not suffer, at neither the federal nor state level, from insufficiently punitive law. This is especially true when it comes to serious crimes of violence, where long—even life—sentences are routinely available. For cold-blooded murder, Louisiana and Texas already prescribe the death penalty. Even low-level crimes are almost always punishable much more severely than is necessary or justifiable. That is why mass incarceration today is viewed as a national pathology. Assaulting, much less killing, a police officer has always, in every jurisdiction, been treated extremely seriously. In states with the death penalty, like Louisiana and Texas, murdering a police officer can already be prosecuted as a capital offense. The move to conceptualize attacks on police as hate crime is a rhetorical ploy, but that is true of the whole hate crime law movement. Soon, if not already, so many crimes will be eligible for hate crime treatment that those victims who are not covered will, perhaps rightly, feel discriminated against

### Griggs

#### Only a fraction of hate on campus gets caught by speech codes – campus activists are the best way to expose injustice.

**Griggs:** Griggs, Brandon [Contributor, CNN] “Do U.S. colleges have a race problem?” *CNN.* November 2015. RP

**Frat brothers chanting racial epithets. People in blackface at "gangsta"-themed parties. A** [**noose hung around a campus statue of a former black student.**](http://www.cnn.com/2014/02/21/us/mississippi-meredith-statue/index.html) **U.S. colleges and universities are more diverse than ever, and yet episodes like these happen with alarming regularity**. The [current unrest at the University of Missouri](http://www.cnn.com/2015/11/10/us/missouri-football-players-protest-presidents-resigns/index.html), whose president and chancellor resigned Monday amid protests over the school's handling of racism on campus, is just the latest and most high-profile in a recent string of racially charged incidents. Hundreds of students marched on the University of California, Los Angeles campus in protest last month after [some students wore blackface to a Kanye West-themed fraternity party](http://www.latimes.com/local/lanow/la-me-ln-ucla-blackface-kanye-party-20151008-story.html). Across town at the rival University of Southern California, student leaders are demanding action after the undergraduate student body president, who is Indian-American, [was accosted with a racial slur](http://www.latimes.com/local/education/la-me-ln-usc-racism-20150922-story.html) by another student who threw a drink at her. In September, a former University of Mississippi student [was sentenced to six months in federal prison](https://www.washingtonpost.com/news/grade-point/wp/2015/09/17/former-ole-miss-student-sentenced-to-six-months-for-putting-noose-around-statue/) for hanging a noose last year around a statue of James Meredith, the school's first black student. And [the University of Oklahoma banned the fraternity Sigma Alpha Epsilon and expelled two students](http://www.cnn.com/2015/03/09/us/oklahoma-fraternity-chant/) last spring after members were caught on video doing a racist chant on a bus. Even seemingly well-intentioned acts are exposing simmering racial tensions. Yale University's campus erupted in anger last week after an administrator sent an email to students questioning whether setting limits on ethnically or culturally sensitive Halloween costumes was restricting their free speech. What's going on here? It may seem like American colleges suddenly have a race problem, but observers say this recent rash of racial harassment is not unprecedented. Most universities are seen as bastions of tolerance and progressive thought. But they're also places where young men and women, many living away from home for the first time, are thrown together with other ethnic groups with whom they may be unfamiliar. It may not be surprising, then, that minority students at schools with less diversity experience more incidents of stereotyping and discrimination, [according to a 2012 UCLA study](http://heri.ucla.edu/briefs/urmbriefpressrelease.pdf) (PDF). Correspondingly, reports of discrimination occur much less often at schools where the student body is more ethnically diverse, said Sylvia Hurtado, director of the Higher Education Research Institute at UCLA and the study's lead author. Add freedom from parental supervision, racially divided campus cliques and the sometimes-ugly effects of alcohol, and you have a climate that can produce racial tensions, experts say. "Racial incidents on college campuses are nothing new. They happen all the time," said Robert Bruce Slater, managing editor of [the Journal of Blacks in Higher Education](https://www.jbhe.com/incidents/), which has been keeping a database of racial incidents on campuses for nearly 25 years. In fiscal year 2015 the U.S. Department of Education recorded 146 cases of racial harassment on college and university campuses, down from 177 the previous year but up from 96 in 2009. "We have seen no upward or downward trend over the past quarter-century," Slater added. "**It's been steady, and probably only a tiny portion of the racist incidents ever get reported." In fact,** [**research has showed that only about 13% of racial incidents at colleges get reported to a campus authority**](http://heri.ucla.edu/briefs/urmbriefreport.pdf) **(PDF), suggesting that the problem is much worse than it appears. But several factors may be amplifying the issue as never before.** In an age in which campus misbehavior can be documented with a phone and spread on Facebook or Twitter within seconds, racist incidents are less likely to go unnoticed. "Social media has certainly been a factor in getting the word out," Slater said. "If something happens on campus now, the word is going to spread incredibly quickly. It definitely has an amplifying effect." **And at the University of Missouri at least, black campus activists** [**say they felt emboldened by #BlackLivesMatter, the protest movement**](http://www.nytimes.com/2015/11/10/us/university-of-missouri-system-president-resigns.html) **that has sprung up across the country since the fatal shooting of unarmed Michael Brown in Ferguson, Missouri, about two hours to the east. Grad student** [**Jonathan Butler, whose hunger strike helped topple University of Missouri President Tim Wolfe**](http://www.cnn.com/2015/11/09/us/jonathan-butler-hunger-strike-missouri-profile/)**, participated in protests in Ferguson. "#FergusonTaughtMe Resistance," he tweeted Monday afternoon after Wolfe stepped down. It's not just Missouri where students, concerned about the racial climate at their schools, are wielding newfound power. Campus activists across the country, fed up with what they see as their administrators' inadequate response to racial harassment, are taking matters into their own hands.** At Ithaca College in upstate New York, [student leaders are seeking a vote of "confidence" or "no confidence" in President Tom Rochon](http://college.usatoday.com/2015/11/08/ithaca-college-president-campus-racism/) by November 30 after what they say was a slow response to several allegedly racist incidents on campus. Administrators at [UCLA are conducting an investigation into the racially charged Kanye West party](http://www.latimes.com/local/lanow/la-me-ln-ucla-blackface-kanye-party-20151008-story.html), thrown jointly by a frat and a sorority, after a large group of students crammed into Chancellor Gene Block's office in early October, demanding a response. Social activities at the fraternity, Sigma Phi Epsilon and the Alpha Phi sorority have been suspended. At USC, where a member of a fraternity called student President Rini Sampath an "Indian piece of s\*\*\*," [student leaders are demanding a campuswide action plan against bias](http://www.latimes.com/local/lanow/la-me-ln-usc-racism-20151020-story.html), including the appointment of a top administrator to promote diversity, equity and inclusion. And then there's Yale, where [more than 700 members of the campus community signed an open letter](http://downatyale.com/post.php?id=430) condemning [an October 30 email](https://www.thefire.org/email-from-erika-christakis-dressing-yourselves-email-to-silliman-college-yale-students-on-halloween-costumes/) by Erika Christakis, an associate master at one of the university's residential colleges. Christakis, responding to another campus email cautioning against racially insensitive offensive Halloween costumes, wondered, "Is there no room anymore for a ... young person to be a little bit obnoxious ... a little bit inappropriate or provocative or, yes, offensive?" In the days afterward, a group of students yelled epithets at Christakis' husband, Nicholas, master of the residential college, and [Yale Dean Jonathan Holloway was surrounded on campus by hundreds of aggrieved students](https://www.washingtonpost.com/news/grade-point/wp/2015/11/05/a-confrontation-over-race-at-yale-hundreds-of-students-demand-answers-from-the-schools-first-black-dean/) demanding a reponse. Campus observers believe the episode exposed long-simmering racial tensions at Yale, where a fraternity reportedly turned away black students from a Halloween party, saying the gathering was for "white girls only." The frat, [Sigma Alpha Epsilon, has denied the allegations](http://yaledailynews.com/blog/2015/11/02/sae-denies-charges-of-racism/). "For starters: the protests are not really about Halloween costumes or a frat party. They're about a mismatch between the Yale we find in admissions brochures and the Yale we experience every day," [Yale senior Aaron Lewis wrote in a blog post](https://medium.com/@aaronzlewis/what-s-really-going-on-at-yale-6bdbbeeb57a6). "They're about real experiences with racism on this campus that have gone unacknowledged for far too long," he added. "The university sells itself as a welcoming and inclusive place for people of all backgrounds. Unfortunately, it often isn't." So what can educators do to address this problem? Before his resignation, Missouri Chancellor R. Bowen Loftin ordered mandatory sensitivity training for faculty and students, but [some black students said the gestures were insufficient](http://www.cnn.com/2015/11/09/us/missouri-football-players-protest-president-resigns/index.html) and called for school officials to implement broader cultural sensitivity training. At Yale, [a member of the Black Student Alliance urged the administration](http://yaledailynews.com/blog/2015/11/09/salovey-responds-to-student-concerns/) to add more campus initiatives for minorities and give students input on administration and faculty hiring. [USC student leaders are demanding more funding](http://www.latimes.com/local/lanow/la-me-ln-usc-racism-20151020-story.html) for scholarships, fellowships and programming for minority groups along with campus cultural centers serving African-Americans, Asians, Latinos, LGBT students and others. And campus activists across the country are asking schools to admit more minority students and hire a more diverse faculty. The most immediate, and fashionable, step may be mandatory diversity training for faculty and students. But Slater, of the Journal of Blacks in Higher Education, is not convinced that it does any good. "A strict no-tolerance policy is probably the best strategy," he said. "If students know they are going to be expelled, suspended or have their financial aid cut if they participate in racist behavior, it is likely students would think twice before acting in an offensive manner."

### NCIB

#### Hiding racism creates a virulent form of oppression that makes change impossible

**NCIB:** Nicole’s Civic Issues Blog [Weblog about civic issues and problems of racism that exist] “I*s there a Hidden Racist Problem in State College?”* March 2016. RP

**When you think about State College, diversity is one of the first things that come to mind. Yes, Penn State University is located in one of the most rural, white towns in Pennsylvania but people from different states and even countries come to Penn State for the education**. There are thousands of different organizations that are made to show off the pride of all these different cultures. There is an African Students Association, Arab Student Union, Caribbean Student Association, European Student Club, and an Irish Student Society but the list goes on and on. Penn State has never seemed to have a problem with threats to these cultural organizations. Would it surprise you if that statement was false? **In 2001, there was a serious racist threat to the president of Black Caucus, an organization that still exists today. The president, LaKeisha Wolf, received several “hate” letters from the span of October to April. One of the letters in April said,”This is a white academy in a white town in a white county, and by God it’s going to stay that way. We are determined to rid this place of the black blight on our community. Those like you have been run off or killed. You will also just disappear.” For most Penn State students today, this** **would be a shocking report since it is uncommon to hear that kind of threat on campus.** Diversity is welcomed and frequently celebrated with different events throughout the year. In 2001 though, this threat led to a 300 person “camp in” which led to more funding for African American students. The one good thing about this story is that it happened 15 years ago. Times have changed right? At Penn State that hopefully is the case. But looking more recently in the news, racism is still a pressing issue. **A New York Times article was published in 2015 because of protests that were lasting for months over racial issues at University of Missouri. The article had about 24 different stories of racial tensions in college campuses across the nation**. Here are a few of them. Halloween weekend, a group of friends and I were hanging out. As Native students, we stuck together. What was originally a fun night out quickly turned sour when I saw a white girl in a ”Pocahottie” costume. We had seen plenty of redface costumes before, but we felt an obligation to say something. My friend confronted her and said, ”Hey, you know your costume is pretty messed up, right? Especially when you wear it in front of a group of Native Americans.” To which the girl laughed and said: ”How. I come in peace.”**The story ended up getting lost in the mix of other racially tense Halloween stories that happened at Harvard. No administrative response, no comment from race relations tutors, no email from the house masters. Racism was left unquestioned, and unaccounted for**. — Kapena, Harvard University Last semester a makeshift noose was hung on my campus at the student center. I responded with fellow black students by protesting and participating in die-ins on campus. The result was a large talk given by campus administration and a series of emails reassuring us that measures were being taken on campus to create a ”colorblind” university. A student turned him or herself in the following day and said that they did not understand the implications. The student is now back on campus. — Danielle Mayes, Duke University I am Hispanic. I was out with some friends and we met some guys. One of the guys stated: ”You’re not American. Where are you from?” I told him I was indeed American and from New York. I could tell he was uncomfortable after that. — Joanna Carrasco, Pennsylvania State University **These stories show the hidden racial problem that many college campuses have. It may not be blatant but does that mean that the administration should not do anything to fix the problem? It seems as though hiding these problems under the rug is the biggest issue that colleges face. The next time you see something that could be offending to a certain race or culture, approach the issue and try to fix the problem. Students can make the change possible.**

### York

#### Censorship doesn’t solve the root cause, increases the power of dominant elites, and suppresses valuable information that’s key to activism [a2 cyberbullying pic/harassment/anything tbh]

**York:** York, Jillian C. [Writer and contributor for several news sources] “Harassment Hurts Us All. So Does Censorship.” *Medium.* September 2013. RP

**The crux of the interview, and the issue at hand, is whether or not censorship is a good solution to the problem of online harassment and bul- lying. It has become a fairly commonplace response to certain “undesirable” speech—be it misogynistic, racist, homophobic, etc—to call for bans on it, either from government or from online platforms themselves**. I sympathize with the sentiment behind those calls—who amongst us hasn’t wished a certain racist or sexist commentator would just disappear?—but in the end, I just can’t abide. **You see, I don’t see censorship as a solution to anything.** I see it as a band-aid slapped carelessly over a gaping, septic wound. **That is not to deny the effects of harassment, or even “hate speech” (click the link to understand why I use quotes around that term), but to say that the problem is institutional, systemic, and in need of a better solution. It makes me very frustrated when arguments are made to ban a certain type of speech, but seem to go no further, as if ridding our spaces of that speech is the be-all end-all to solving the problem.** Hint: it’s not. Most of all, I don’t believe that censorship offers lasting benefits. **If this were a perfect world, in which we could draw a very solid red line be- tween speech that should be banned and speech that should not, and we were all able to have a voice in making those determinations, and that blocking was done with the utmost oversight, transparency, and accountability, you might be able to convince me. The truth, however, is that efforts to censor hate speech, or obscenity, or pornography, are far too often overreaching, creating a chilling ef- fect on other, more innocuous speech. Microsoft Bing, which I men- tioned in my article, is not the first nor the last platform to block “breast” and with it, “breast cancer” and “chicken breast.” In my years of research, I’ve spoken to doctors whose workplace network blocked important health terms, to women in Saudi Arabia whose ISPs did the same, to queer youth whose schools or public libraries used pornogra- phy filters that took down non-obscene LGBTQ content with it, and so on.** And as such, I’m convinced that the imperfect technologies we put so much stock in to make our world a little better and brighter actually make it darker. I**’ve also talked to activists and others around the world whose content has been taken down from Facebook and YouTube because it doesn’t meet the yes, patriarchal terms of service set forth by the mostly-male teams that design them.** Breastfeeding=bad, violence against women=good, they tell us. They take down important pages (like ‘We Are All Khaled Said’) because their moderator, likely an at-risk activist in an unsafe space, dares use a pseudonym. **And yet you want to trust them to regulate speech even more?** No, thanks. I am not deaf to the argument that in some contexts, removing certain types of speech creates a safer and more inclusive space. To be clear, I want those spaces to exist. That’s the same reason I moderate comments on my blog and block trolls on Twitter. But I view that as very different from a major online platform with more than one billion users making those decisions for me. But I also realize that something I said in that interview was, while rep- resentative of my personal experience, pretty callous. I have dedicated a substantial amount of my time to finding and culti- vating platforms for women’s voices, based on my belief that a solution to the widespread harassment and bullying of women online is to keep pushing women’s voices into the mainstream, louder and stronger. I recognize that this solution doesn’t work for everyone, and therefore acknowledge that it’s a mere piece of the puzzle, rather than a solution on its own. So when I say, “I get really tired of [the argument that women are bullied out of public discussions] because I’m a woman and I don’t feel that way,” the point I’m trying to make is that, while I feel bullied, I’m not going anywhere. No way, no how. I want to be clear: I am not denying that women are frequently “bullied off the Internet,” and I can see why it appears from the interview that I feel that way. Rather, I believe that that refrain ignores the experiences of those of us who would prefer to respond to hate speech with more speech, prefer to shout louder over the din. I’ve been accused many times of upholding the patriarchy for my ideal that sunlight and resolve are even a solution, and I’m tired of it. And so I stand by my position, reflected in the words of the great Jus- tice Louis Brandeis, that the best remedy to “bad” speech is more speech, not enforced silence. I believe this, but I also believe we need to fight to ensure that women—as well as other marginalized groups and individuals—have the opportunity to engage in counter speech. If we are to fight for free expression, we must also fight for greater op- portunity, and we must have each other’s backs. We must call out misogyny where we see it, and we must have zero tolerance for it in the workplace. We must commit to inclusivity, and we must raise up those around us who might not have the same privilege that we do. It is possible to be dedicated to freedom of speech and to the advance- ment of women. I’ve worked at the EFF for a little over two years and have found it to be the most inclusive space in which I’ve had the plea- sure of working. Not to mention, eight out of eleven staffers here with the word “director” in their title are women, and on the whole, we’re very balanced in terms of gender. In the often privi- leged field that is digital rights, this is notable. Interviews are less than ideal in getting one’s point across; quotes are shortened, context is left out, and terrible titles are added for link bait. But while I intend to make no excuses for what I’ve said, I feel compelled to elaborate on my beliefs and how I came to them. I expect disagreement, but I’d prefer it be with my ideas, rather than a context- less shell of them. **I believe that free expression is compatible with a better society**, and I will continue to fight for both.

### Jaschik

#### Hate on campuses is high now – speech codes aren’t doing anything.

**Jaschik:** Jaschik, Scott [[Scott Jaschik](mailto:scott.jaschik@insidehighered.com), Editor, is one of the three founders of Inside Higher Ed. With Doug Lederman, he leads the editorial operations of Inside Higher Ed, overseeing news content, opinion pieces, career advice, blogs and other features. Scott is a leading voice on higher education issues, quoted regularly in publications nationwide, and publishing articles on colleges in publications such as The New York Times, The Boston Globe, The Washington Post, Salon, and elsewhere. He has been a judge or screener for the National Magazine Awards, the Online Journalism Awards, the Folio Editorial Excellence Awards, and the Education Writers Association Awards. Scott served as a mentor in the community college fellowship program of the Hechinger Institute on Education and the Media, of Teachers College, Columbia University. He is a member of the board of the Education Writers Association. From 1999-2003, Scott was editor of The Chronicle of Higher Education. Scott grew up in Rochester, N.Y., and graduated from Cornell University in 1985. He lives in Washington.] “Epidemic of Racist Incidents.” *Inside Higher Ed.* September 2016. RP

**A year ago, racial incidents and lingering tensions on many campuses turned into protests in October that spread nationally in November. This year, incidents have multiplied at the very beginning of the academic year. And so have protests. Some of the incidents are closely tied to campus issues.** But many reIect the protest movement -- which extends well beyond campuses -- against police shootings of unarmed black men. Many students are joining that movement, and in particular the calls of some not to stand during the playing of the national anthem before athletic events. And some of the racist incidents involve attacks on Black Lives Matter, frequently invoking the name of the movement along with racist images. Here are some of the incidents: **At the University of North Dakota last week, students posted photographs of themselves in blackface to social media twice in a 48-hour period. In the image at the top of this article, the students added a reference to Black Lives Matter. The university is investigating whether the posts violate any rules.** Mark Kennedy, president of the university, issued that said in part: "I am appalled that within 48 hours two photos with racially charged messages have been posted on social media and associated with the UND campus community. It is abundantly clear that we have much work to do at the University of North Dakota in educating our students, and the entire university community on issues related to diversity, inclusion, and respect for others." Also this month, and students posted photographs of themselves in blackface, prompting campus debates and denunciations. **At the University of Mississippi, students on Friday held a sit-in (at right) for several hours in the main administration building to demand a reaction from the university to a student's tweet in response to the protests in Charlotte, N.C., over the police shooting of a black man. The student tweeted of those protesting: "I have a tree with room enough for all of them, if you want to settle this Old West Style."** Chancellor Jeffrey S. Vitter, whom some students criticized for not immediately calling the tweet racist, issued a statement late Friday that said in part: "To be clear, we condemn the recent social media post by one of our students that referenced lynching. In light of our country’s history, that comment can only be seen as racist, offensive and hurtful, especially to members of our African American community. There is no place in our community for racist or violent acts." **San Jose State University officials are investigating two incidents involving graffiti with swastikas and "hateful language" in two separate incidents in dormitories**. One of the swastikas was drawn next to the words "Admit One Jew." Mary Papazian, sent a message to the campus condemning the incidents and outlining a series of meetings being held about what had happened. At Ohio University, a "free speech" wall where students may write what they want was the site of controversy last week when students found on the wall the words "Build the Wall" (an apparent reference to one of Donald Trump's campaign promises) and a drawing of a person hanging in a noose from a tree. Photos of the wall (at right) quickly spread on social media. Under university policy, the wall is "unregulated" unless there is "a speciDc threat of physical harm." The university issued this statement about the images that appeared last week: "Paint may be able to cover offensive messages and reprehensible images, however, it will never conceal our underlying societal problems. We must purposely work to understand and accept one another in order to address conIicts. Our most fundamental responsibility as an institution of higher education is to promote inquiry and learning. It is our intent that the GrafDti Wall will continue to teach our university community that words and images are powerful." **At the University of Dayton last week, a racial slur appeared on the door of a room of two black students**. Eric F. Spina, the president, condemned this action. In an email message to the campus, he said that "this behavior is simply not acceptable and will not be tolerated." He added that "we will continue to investigate and will hold those responsible accountable for this action." At the State University of New York at Brockport, ofDcials are investigating how the words "niggers deserve to die" were written on a whiteboard in a dormitory that houses many minority students. In response, Heidi Macpherson, the Brockport president, sent a message to all students and faculty members condemning what had happened, reporting that an investigation was taking place, and saying that campus discussions would be scheduled to discuss hate speech. **A freshman at Belmont University ceased to be enrolled last week -- after he posted a racist photo on Snapchat, labeling three National Football League players with the N-word. At American University last week, hundreds of black students held a protest over racist incidents**. The rally was organized after two black women reported incidents involving bananas -- one thrown at a woman and one left outside the door of a woman. Students carried signs saying "Racism at AU Is Bananas." At Eastern Michigan University, the letters KKK and racial slurs were found on several buildings last week, prompting protests and condemnations by university officials.

### Phillips

#### Censorship is racist – it targets minorities within academia with an aim at suppressing their viewpoints.

**Phillips:** Phillips, Peter [Peter Phillips is a professor of sociology at Sonoma State University and former director of Project Censored. [www.projectcensored.org](http://www.projectcensored.org)] “Professor Watch List: A Racist Violation of Free Speech.” December 2016. RP

**Turning Point USA is biased against black faculty and freedom of speech.** Turning Point is a 501(c)3 non-profit organization founded on June 5, 2012. **They sponsor Professor Watch List http://www.professorwatchlist.org a website meant to expose and document college professors who allegedly discriminate against conservative students and advance leftist propaganda in the classroom**. Listed on this watch list are 147 US college professors who have supposedly expressed leftist perspectives. Turning Point accept tips for new additions to the Professor Watch List, but claims to only publish profiles on incidents that have already been reported somewhere else. Turning Point’s mission is to identify, educate, train, and organize students to promote the principles of fiscal responsibility, free markets, and limited government. They claim that they continue to fight for free speech and the right for professors to say whatever they wish; however, students, parents, and alumni deserve to know the specific incidents and names of professors who advance a radical agenda in lecture halls. **Unfortunately, Turning Point’s methodology for selection of professors to include on the list seems to arise from student tips and secondary information with unverified assertions resulting in an extremely biased and racist list. Blacks on the Professor Watch List are over three times more likely to be included than any other ethnicity. In addition, most of the alleged violations include classroom teaching that is clearly covered under freedom of speech and principles of academic freedom**. That those at Turning Point have different perspectives than the scholars listed seems to be the offending issue, and many of Turning Points claims are erroneous, unsubstantiated, or have been refuted. Dr. Robert Jensen, professor of journalism at the University of Texas Austin, is cited for writing an essay, where Jensen argues that rape is part of the larger violent, patriarchy, a position widely held in social science literature, but apparently not in right-wing limited-government organizations. John Bellamy Foster, a sociology professor at the University of Oregon and editor of Monthly Review argues that the specific accusations directed at himself and others on the Professor Watch list are completely beside the point. **The point is whether a new McCarthyite witch hunt, initiated by the alt-right, is to be allowed to intimidate professors in the universities, putting an end to academic freedom. Any watch list of individuals clearly implies a warning to stop the behavior for which the list was created. The McCarthy era taught us the dangers of generalized assertions and labeling of individuals with tainted accusations. Turning Point’s Professor Watch List is an ugly racist attempt to repress free speech in colleges and universities in the US and deserves to be widely condemned.**

### Heller

#### Free speech enables campus activism that functions as a force against the imperial university.

**Heller:** Heller, Henry [Professor of History, University of Manitoba] “Protesting ‘Neoliberal Scholarship’ and the ‘Capitalist University’.” Global Research. November 2016. RP

**The University of Manitoba is on strike. Since 1st November, more than 1,200 faculty members took to the picket line to protest the lack of funding for education, a need for workload protection and safeguarding for fairer tenure and promotion procedures, in addition to addressing several job security issues for instructors and librarians**. Author of [The Capitalist University](http://www.plutobooks.com/display.asp?K=9780745336589), Henry Heller is a professor of History at the University of Manitoba, he writes here of the strike and how the walkout resonates with the themes of his book. Authors don’t often get to live out the denouement of their books. Yet that is what is happening to me as I blog. On 20 October Pluto published The Capitalist University: The Transformations of Higher Education in the United States, 1945-2016. Its last chapter deals with the development of the neoliberal university and the growing resistance to it on the part of faculty and students and other workers. **Two weeks have gone by and I find myself on a picket line at the University of Manitoba on a faculty strike against the neoliberal university.** As we stand vigil at the gates of the University the days are rapidly shortening and getting colder. Overhead the geese are quickly and excitedly fleeing to the south. But each morning since 1 November I find myself on the morning shift defying the university’s attempt to impose total control over the work of professors and librarians at our university. **We are an important part of a rising tide of class struggle developing both inside and outside of universities across the globe against the ravages of neoliberal capitalism.** The heyday of the universities came between 1945-80 at the height of the Cold War and was marked by massive support from government including the military for universities. **Universities defined their mission as directed to public service and strove to create knowledge which had both practical as well as theoretical aspects. In the humanities and social sciences a few scholars even pursued a critical knowledge which sought disinterested truth in the analysis of ideas and society. The climax of this era came in the 1960s when unprecedented student protests over civil rights, the U.S. war in Vietnam and bureaucratic domination over university life spilled over into society at large and led to challenges to the capitalist order. But from the 1980s onward so-called academic capitalism took hold and universities not only more and more redefined their mission as serving private business and themselves becoming as far as possible profit-orientated in their mode of operation and objectives. In the light of this academic capitalism new faculty, administrative and business networks sought to promote a cognitive capitalism, creating new forms of knowledge which could be more or less immediately commodified as intellectual property. These changes are central to the emergence of the neoliberal university marked by the decline of the humanities and social sciences, cuts in public financing, enfeeblement of faculty and student roles in governance, increases in tuition, growing student debt and a fall in the number of tenured faculty and increasing use of adjunct professors**. These changes have been accompanied by dramatic increases in the number and salaries of administrators, centralization of management in the hands of presidents and boards of governors based on total quality management, preoccupation with endowments, predatory financing of growing student debt, research parks, real estate deals and globalized university ranking systems. **The influence of big business already great became overwhelming**. Capping off these changes are the growth of for-profit universities like Phoenix University and the growth of mainly business-backed Massive Online Open Courses (MOOCs) which augur a decline in the need for permanent faculty and investments in fixed capital**. These developments which follow from the logic of neoliberal economics which continues regnant in the operation of universities suggest the eventual extinction of the modern university and its replacement by new kinds of market-driven institutions of higher learning** – a depressing prospect for most people that can bring a smile only to the lips of a University of Chicago economics professor. **But in The Capitalist University I show that these trends toward privatizing knowledge far from auguring well for capitalism inhibit its functioning and put into question its legitimacy and reflect the depth of capitalism’s crisis in which it seeks to parasitize and undermine those practices and institutions which once helped to sustain it economically and ideologically. A conservative tendency emerged on campuses, beginning with the election of Reagan in 1980. Followed by a widespread abandonment of Marxism and depoliticization, linked to the emergence of postmodernism, the cultural turn and neoliberal economics**. All three intellectual currents were marked to a greater or lesser degree by a turning away from history in a way which is reminiscent of the historical amnesia in the humanities and social sciences during the 1950s. At the same time all three saw a further opening of American academic life to cosmopolitan influence. Reinforced by the scientism and reifications of neoliberal economics these decades saw the step-by-step offensive of academic and cognitive capitalism and reorganization of the universities into neoliberal institutions. Seemingly in isolation, Marxist literary critic and philosopher [Fredric Jameson](https://en.wikipedia.org/wiki/Fredric_Jameson) towered above American scholarship as the interpreter of this dark period. The onset of financial and economic crisis in 2008 brought with it widespread revival of interest in Marxism, the growth of union militancy on campus and the revival of political movements like Occupy, Black Lives Matter, Boycott, Divestment and Sanctions (BDS) and the Bernie Sanders primary election campaign in which students played leading roles. As in the 1960s, universities proved to be springboards to campaigns aimed at the transformation of American society. Moreover, as key sites of training, research and economic development, universities have become central locations within the structures of contemporary capitalism for which knowledge industries closely inter-connected to universities are the leading edge. The labour force within academic institutions and these enterprises including most teachers and researchers are of course already made up of wage workers who are already involved in productive, i.e. profitable labour or soon will be. **Tenured faculty themselves are losing control of their work**. In the face of these currents imposed from above the obvious rejoinder is struggle from below which in the form of the development of unions is only in its early stages. **Knowledge workers, who by definition have high levels of skill, work at strategic productive locations and need to cooperate with one another in an increasingly dependent work process, are in a position to struggle effectively against academic capitalism**. Driven by the need for revenue and for reasons of prestige, universities have become deeply enmeshed in seeking intellectual property rights or monopolistic control of patents, inventions, copyrights and even trademarks. The number of patents applied for by universities has multiplied from a few score in the 1970s to over 5000 at the turn of the millennium. In an early phase of capitalism such rights undoubtedly helped innovation. Today, the dominant economic view is that protection of such intellectual property rights is key to economic innovation. Indeed, the contention is that the privatization of new knowledge in this way is creating new links on a national and global level with private industry. The economic progress of the recent past was due not to intellectual property rights but was the fruit of earlier public investment in science and technology, rather than facilitating the spread and application of knowledge such claims are creating an atmosphere of exclusivity and secrecy; litigation is becoming more important than creativity and the spread of intellectual property rights will obstruct future progress by promoting fragmentation of information, unnecessary duplication of effort, secrecy and lawsuits. Historically science has been a collaborative process in which large numbers of individuals contribute a part to a cumulative and collective process. This ethos is at antipodes to the neoliberal system of intellectual property which depends on a single agent claiming credit for the entire process. **This returns us to the fundamental questions raised by the students in the Free Speech Movement at Berkeley fifty years ago. While university administrators, politicians, businessmen and neoliberal economists seek to turn knowledge into exchange value, it proves difficult to do so. Indeed, the creation and dissemination of knowledge is being held captive by the fetters of academic capitalism. The incredible accumulation of academic knowledge begs to be set free as a use-value as part of a general intellect or mass democratic consciousness which almost certainly will assume political and social control over society. At the same time, the continuing attack on the idea that the universities should serve the public good and the undermining of the place of the humanities and social sciences in universities is among other factors helping to undermine the political legitimacy of capitalism. Right now faculty at the University of Manitoba are holding firm on the picket lines. Talks with management continue. To settle this strike we are demanding minimal protection against arbitrary workload increases, fair assessment practices and job security. Yet as I walk the line in the bitter cold talking with chemists, social workers, sociologists, accounting professors it occurs to me that we are in the end the university and that management is in the end the product of an ongoing usurpation of both labour and knowledge**. Next week I will lecture on this in an improvised teach-in on the picket line. Learning must go on. •

### Yancy

#### The surveillance state keeps a watch on minority professors who dare to question their authoritarian policies – research and speech of professors is being stifled now.

**Yancy:** Yancy, George [George Yancy is Associate Professor of Philosophy at Duquesne University. His many books include Black Bodies, White Gazes: The Continuing Significance of Race.] “I Am a Dangerous Professor.” *The New York Times.* November 2016. RP

Those familiar with George Orwell’s “1984” will recall that “Newspeak was designed not to extend but to diminish the range of thought**.” I recently felt the weight of this Orwellian ethos when many of my students sent emails to inform me, and perhaps warn me, that my name appears on the Professor Watchlist, a new website created by a conservative youth group known as Turning Point USA**. I could sense the gravity in those email messages, a sense of relaying what is to come. **The Professor Watchlist’s mission, among other things, is to sound an alarm about those of us within academia who “advance leftist propaganda in the classroom**.” It names and includes photographs of some 200 professors. **The Watchlist appears to be consistent with a nostalgic desire “to make America great again” and to expose and oppose those voices in academia that are anti-Republican or express anti-Republican values. For many black people, making America “great again” is especially threatening, as it signals a return to a more explicit and unapologetic racial dystopia**. For us, dreaming of yesterday is not a privilege, not a desire, but a nightmare. **The new “watchlist” is essentially a new species of McCarthyism, especially in terms of its overtones of “disloyalty” to the American republic**. And it is reminiscent of Cointelpro, the secret F.B.I. program that spied on, infiltrated and discredited American political organizations in the ’50s and ’60s. **Its goal of “outing” professors for their views helps to create the appearance of something secretly subversive**. It is a form of exposure designed to mark, shame and silence. So when I first confirmed my students’ concerns, I was engulfed by a feeling of righteous indignation, even anger. The list maker would rather that we run in shame after having been called out. Yet I was reminded of the novel “The Bluest Eye” in which Toni Morrison wrote that anger was better than shame: “There is a sense of being in anger. A reality and presence. An awareness of worth.” The anger I experienced was also — in the words the poet and theorist Audre Lorde used to describe the erotic — “a reminder of my capacity for feeling.” It is that feeling that is disruptive of the Orwellian gestures embedded in the Professor Watchlist. Its devotees would rather I become numb, afraid and silent. However, it is the anger that I feel that functions as a saving grace, a place of being. If we are not careful, a watchlist like this can have the impact of the philosopher Jeremy Bentham’s Panopticon — a theoretical prison designed to create a form of self-censorship among those imprisoned. **The list is not simply designed to get others to spy on us, to out us, but to install forms of psychological self-policing to eliminate thoughts, pedagogical approaches and theoretical orientations that it defines as subversive. Honestly, being a black man, I had thought that I had been marked enough — as bestial, as criminal, as inferior**. I have always known of the existence of that racialized scarlet letter. It marks me as I enter stores; the white security guard never fails to see it. It follows me around at predominantly white philosophy conferences; I am marked as “different” within that space not because I am different, but because the conference space is filled with whiteness. It follows me as white police officers pull me over for no other reason than because I’m black. As Frantz Fanon writes, “I am overdetermined from without.” But now I feel the multiple markings; **I am now “un-American” because of my ideas, my desires and passion to undo injustice where I see it, my engagement in a form of pedagogy that can cause my students to become angry or resistant in their newfound awareness of the magnitude of suffering that exists in the world.** Yet I reject this marking. I refuse to be philosophically and pedagogically adjusted. To be “philosophically adjusted” is to belie what I see as one major aim of philosophy — to speak to the multiple ways in which we suffer, to be a voice through which suffering might speak and be heard, and to offer a gift to my students that will leave them maladjusted and profoundly unhappy with the world as it is. Bringing them to that state is what I call doing “high stakes philosophy.” It is a form of practicing philosophy that refuses to ignore the horrible realities of people who suffer and that rejects ideal theory, which functions to obfuscate such realities. It is a form of philosophizing that refuses to be seduced by what Friedrich Nietzsche called “conceptual mummies.” Nietzsche notes that for many philosophers, “nothing actual has escaped from their hands alive.” In my courses, which the watchlist would like to flag as “un-American” and as “leftist propaganda,” I refuse to entertain my students with mummified ideas and abstract forms of philosophical self-stimulation. What leaves their hands is always philosophically alive, vibrant and filled with urgency. I want them to engage in the process of freeing ideas, freeing their philosophical imaginations. I want them to lose sleep over the pain and suffering of so many lives that many of us deem disposable. I want them to become conceptually unhinged, to leave my classes discontented and maladjusted. Bear in mind that it was in 1963 that the Rev. Dr. Martin Luther King, Jr. raised his voice and said: “I say very honestly that I never intend to become adjusted to segregation and discrimination. I never intend to become adjusted to religious bigotry. I never intend to adjust myself to economic conditions that will take necessities from the many to give luxuries to the few. I never intend to adjust myself to the madness of militarism, to self-defeating effects of physical violence.” I also recall the words Plato attributed to Socrates during his trial: “As long as I draw breath and am able, I shall not cease to practice philosophy.” By that Socrates meant that he would not cease to exhort Athenians to care more for justice than they did for wealth or reputation**. So, in my classrooms, I refuse to remain silent in the face of racism, its subtle and systemic structure. I refuse to remain silent in the face of patriarchal and sexist hegemony and the denigration of women’s bodies, or about the ways in which women have internalized male assumptions of how they should look and what they should feel and desire. I refuse to be silent about forms of militarism in which innocent civilians are murdered in the name of “democracy.” I refuse to remain silent when it comes to acknowledging the existential and psychic dread and chaos experienced by those who are targets of xenophobia and homophobia. I refuse to remain silent when it comes to transgender women and men who are beaten to death by those who refuse to create conditions of hospitality. I refuse to remain silent in a world where children become targets of sexual violence, and where unarmed black bodies are shot dead by the state and its proxies, where those with disabilities are mocked and still rendered “monstrous,” and where the earth suffers because some of us refuse to hear its suffering, where my ideas are marked as “un-American,” and apparently “dangerous.” Well, if it is dangerous to teach my students to love their neighbors, to think and rethink constructively and ethically about who their neighbors are, and how they have been taught to see themselves as disconnected and neoliberal subjects,** then, yes, I am dangerous, and what I teach is dangerous.

### Herron

#### Trusting college administrators to decide who and what should be heard arbitrarily expands their power – this spills over and deters.

**Herron:** Herron, Vince [Class of 1994, University of Southern California Law Center. B.A. 1990, University of California, Los Angeles.] “NOTES: INCREASING THE SPEECH: DIVERSITY, CAMPUS SPEECH CODES, AND THE PURSUIT OF TRUTH.” Southern California Law Review. January 1994. RP

**Professor Matsuda argues that, under principles of academic freedom and free expression, ignorant views need not be heard, but academically tenable views should be. n103 But how are the censors to know when a view is academically tenable and when it is ignorant? Certainly one cannot argue that governments, legal systems, and nations have not been wrong before**. One need only remember the great minds who contended that the earth was flat or that slaves were not people under the U.S. Constitution n104 to remind oneself that even very closely held propositions may be false. Besides fears that certain ideas, true and false, may be expunged from the marketplace, speech codes will also indi- rectly eliminate acceptable ideas from the marketplace. The movement to control speech ... has a sinister side... The chilling effect on those who are concerned about potential punishment ... will surely stifle the free and robust exchange of ideas that is so critical to the campus climate. n105 **Even if administrators can devise a code that prohibited only the right amount of speech and allows all speech necessary for academic debate, the mere threat of penalty will have a chilling effect.** n106 This deterrence effect will be especially strong under codes which use the contextual method or bal- ancing test to determine whether certain speech is sanctionable, because these codes offer only vague definitions of what is permitted and what is prohibited. Thus, under these codes students and faculty will not offer certain ideas that are unpopular or inflammatory but nonetheless permitted and encouraged, because the students and faculty members will be unsure whether they will be free of sanction for presenting those ideas. **The political correctness movement has already forced students and faculty to filter their expression and keep some opinions to themselves**. Many college students today already feel as though the atmosphere of free discourse, criticism and inquiry at universities is [\*431] not what it should be. n107 Even law school professors have reported an unwilling- ness among students to even argue hypothetically for the "wrong' side in matters that touch on political correctness be- cause they fear being labeled an -ist of some sort. n108 The P.C. movement has created an atmosphere of campus repres- sion in the name of sensitivity. **Students have to walk on eggshells and a number of well-respected professors have dropped courses that touch on controversial topics**. n109 This movement then acts as informal speech regulation with informal sanctions. Students are deterred from speaking up in class out of fear that their classmates will hiss at them and that they will be shunned and excluded as some sort of a bigot. **Faculty members, while recognizing the importance of selling both sides of a debate to students, may be deterred from backing one side or the other because they fear that con- troversy may affect tenure decisions**. People are perfectly willing to restrict speech when it serves their own agendas; n110 speech codes will give people so inclined the ability to do so. Speech codes will formalize restrictions on the expression of opinions. They will add height to the hurdles set up by the P.C. movement and intensify this already unfortunate deterrent. Educators and administrators should address this problem by attempting to diminish the pressures that political correctness has created, thereby increasing the speech on university campuses. **Speech codes do just the opposite. One example of a code that deterred free and open debate was the University of Michigan speech code**. As men- tioned above, the code came with an interpretive guide which defined as violative a statement suggesting that women were not as good in a certain field as men. A teacher's assistant testified that he wished to discuss questions relating to sex and race differences in his capacity as a teaching assistant in Psychology 430, Comparative Animal Behavior. He stated that hypotheses regarding sex differences and mental abilities suggested that men as a group do better than wom- en in some spatially related mental tasks, and that this was an appropriate topic to discuss. But he stated that he was afraid to speak to the class about these differences because he feared he might be charged with a violation of the speech Policy. These theories seem academically tenable and would be allowed under Matsuda's rule. The univer- sity might encourage discussion on these theories but the teaching assistant was deterred from offering them because he feared sanction under the speech code. **Thus even if administrators created a code that authorized all academically tena- ble theories and ideas offered during reasoned debate, it is probable that many of these theories and ideas might still be deterred indirectly by the code. University environments do not need speech codes to add formality and intensity to the informal regulations and deterrents that already exist. Universities should avoid speech codes because they will reduce the amount of speech on the campus. University administrators should seek to increase the speech.**

#### Speech codes distract away from solving the root cause of hate on campus

**Herron:** Herron, Vince [Class of 1994, University of Southern California Law Center. B.A. 1990, University of California, Los Angeles.] “NOTES: INCREASING THE SPEECH: DIVERSITY, CAMPUS SPEECH CODES, AND THE PURSUIT OF TRUTH.” Southern California Law Review. January 1994. RP

**Speech codes are not a viable solution to the problem of offensive language in the university. Speech codes do not attack the root problems which breed the language; they therefore cannot offer any long-term relief to victims. Also, speech codes may intensify the tensions which lead to injurious speech and may actually impede other mechanisms from attacking the root problems by effectively masking the underlying problems.** Finally, the speech codes fail the university as a whole by trampling on the very foundations upon which the university is grounded. Following is a more in-depth analysis of speech codes that demonstrates their inevitable failure. As mentioned above, speech that can cause egregious injuries may be characterized as a product either of malice and intolerance of close-minded bigots or the result of guileless and naive individuals who meant no harm and are often unaware that their statements generated injury. **But speech codes seek only to prevent the results of abusive speech. They fail to remedy, and in many instances even to acknowledge, the root causes of the abusive speech**. **These codes, then, do little or nothing to defeat the real problems of hate speech - intolerance and ignorance. In this respect speech codes are as ineffective as** fighting a fire by spraying water on the tips of flame while allowing the house to continue to burn. This technique will reduce the size of the flames but will never put out the fire. Addressing the intolerance that breeds hate speech, one critic comments, Suppressing objectionable speech solves nothing**. Suppressing racist speech will not eliminate racism**. Suppressing sexist speech will not abolish sexism. And suppressing anti-gay speech will not eradicate homophobia. As for enlightening the ignorant who make comments either because they mistakenly believe in group superiority or are unaware of the damage that innocent comments can create, the same scholar notes, Students bring to college their prejudices, their fears, their doubts, their misconceptions. If they spend four years cooped up under repressive regulations, they might dutifully obey the rules, offend no one, en- joy politically correct acceptance and leave with their prejudices, fears, doubts and misconceptions firmly intact. **Another author, demonstrating that codes do not attack the problem at its core, makes a distinction between man- ners and virtue. She comments that while manners can be coerced, compelling a person to act virtuously will not create a virtuous person. Enforcing virtuous behavior will not lead to internalization of the underlying moral be- liefs upon which speech codes are grounded. John Locke once said that it is one thing to press with arguments, another with penalties. n61 Abraham Lincoln agreed that if a man is shunned he will retreat within himself, close all the avenues to his head and his heart**. Speech codes that force students to act virtuously, but fail to instill in the students the vir- tues upon which the codes are grounded, will do little to combat the real problems and thus are destined to fail. There is an argument that enforcing speech codes will offer some education and internalization of the underlying virtues, an effect similar to the use of gender-inclusive speech. Using such speech, which at first feels irregular to the speaker, reminds the speaker of its purpose of eliminating sexism from the English language. University students re- quired to employ certain expressions and forbidden to use others surely understand that there is a purpose for the regula- tion. Not blind to the history of oppression and prejudice against particular minority groups, they will internalize an extra awareness of difficulties that face these minority groups and understand that speech codes are a mechanism to remove those difficulties. Thus the simple enforcement of these codes leads to some degree of internalization of the underlying virtues by the speaker. Of course, it is impossible to garner whether the student internalizes more through coercion than as a result of fur- ther education and illustration, but it seems logical to assume that a student with a complete understanding of the sensi- tivities of other groups and the effects of certain expressions is more likely to grasp the awareness that the speech codes wish to foster. One must also concede that speech codes which prevent the expression of certain intolerances and una- warenesses deprive the listener of the opportunity for education about the underlying virtues. This, then, is a sort of out of sight, out of mind argument and is dealt with more fully in Part III.C. One pitfall, into which campus administrators have fallen in their haste to invent a cheap, quick fix, is that they have failed to devise speech codes that attack the perceived problem of offensive speech at its roots. **For this reason alone, speech codes on college campuses may be one of the least effective ways a university can improve campus rela- tions and diminish campus tensions.** n65

#### Speech codes cause backlash from dominant groups

**Herron:** Herron, Vince [Class of 1994, University of Southern California Law Center. B.A. 1990, University of California, Los Angeles.] “NOTES: INCREASING THE SPEECH: DIVERSITY, CAMPUS SPEECH CODES, AND THE PURSUIT OF TRUTH.” Southern California Law Review. January 1994. RP

Some will argue that speech codes were never intended to solve the underlying problems of racism, sexism, and homophobia. According to this theory, speech codes are meant only to give minority groups respite from verbal attacks while the university employs other mechanisms to attack root problems. These proponents argue that speech codes achieve these rather temporary and modest goals. Speech codes, they will argue, improve the situation for the minority students and give the university time to defeat the ignorance and intolerance that originally necessitated the promulgation of the speech codes. But it is unlikely that speech codes are so unambitious that they envision only preventing injury without attempting to address real problems. To believe the above proposition, one must believe that university administrators, in an at- tempt to foster better relations on campuses, produce codes with no more in mind than the vain hope that speech codes will be a quick fix to a long-term problem. The argument then, is that because they are offered only as a quick fix to a long-term problem, speech codes in fact do succeed in their goal of injury prevention. Even if it is true that administrators are so short-sighted, there is some evidence that speech codes actually serve to exacerbate already strained tensions on campuses. **Dominant groups, which consider codes to be abridgements of free expression created to solve a problem reported only by minority groups (a problem whose gravity the dominant group does not recognize or understand), may struggle to accept the restrictions. Also, both dominant and minority group members alike have been and will be sanctioned by university administrators under these codes that, doubtless, exacer- bate tensions among members of these groups. It has also been suggested that censoring certain expression makes the expression more, rather than less, attractive. This leads to increased, not decreased, use of this expression, and, there- fore, more injury, not less. Speech code proponents may disagree with the proffered evidence and dispute that the codes actually exacerbate tensions. They may continue to assert that speech codes in fact benefit minority group members by protecting them from injurious speech. But even if this assertion is accepted, these modest gains will be short-lived and are far out- weighed by what both minority group members and educational environments sacrifice when speech codes are estab- lished and enforced.**

#### Speech codes become tools of the colleges to suppress ideas they don’t want to hear out of self-interest.

**Herron:** Herron, Vince [Class of 1994, University of Southern California Law Center. B.A. 1990, University of California, Los Angeles.] “NOTES: INCREASING THE SPEECH: DIVERSITY, CAMPUS SPEECH CODES, AND THE PURSUIT OF TRUTH.” Southern California Law Review. January 1994. RP

**Not only do codes suppress ideas which we find profane and unacceptable, but they often censor ideas that should not be censored, ideas which play a legitimate role in academic discourse and should be kept in the university market- place. Opponents of hate speech codes who argue that censorship is bad for the educational environment are pessimistic about the ability of university administrators to censor certain forms of expression without the censorship's de- generating into an attempt to suppress political opposition or cultural differences.** n84 But some proponents have argued that codes can selectively censor only ideas which do not play a legitimate role in discussion. They argue that censorship enforced by campus administrators should not be worrisome, because codes are neither attempts by the government to censor political ideas nor attempts to perpetuate majority groups' power over minority groups. This type of censorship is initiated by university administrators solely to further the valid goals of education and scholarship. These proponents must be suggesting, then, that it is possible for university administrators, by exercise of judgment, to prom- ulgate speech codes that only prevent the right amount of speech and will not lead down a slippery slope into gross censorship. This is a dangerous proposition. **Surely those proponents of speech codes cannot deny that this nation, throughout its history, has fought censorship that at first seemed innocent and in the public interest but later became excessive**. n88 If we put the power of censorship in the hands of a university administration, we place the university at the mercy of the morals, ethics, and judgment that those administrators possess. We cannot trust them to be able to proscribe only speech which they do not believe belongs in the university. N o one group, and no one set of values, has a monopoly on truth. n89 **The difficulty that administrators face in promulgating speech codes that proscribe only the right amount of speech stems from their inability to articulate a useable definition which distinguishes unacceptable, injury-causing speech from speech which is necessary in academic discourse and which incidentally causes injury**. Without this distinction administrators are impotent to draw an appropriate boundary inside which censorship is unacceptable, but outside which censorship is not. **Those who codify the speech policy are not able to single out a few words or expressions that inflame racial and other tensions and guarantee that those words or phrases have neither value nor an appropriate place in aca- demic debates and formal conversations**. Peter Byrne suggests that racial insults have little or no social value n90 and that n ot even the staunchest supporter of the most absolute view of first amendment protection argues that racial insults have any significant social or individual value. n91 But what Byrne fails to note is that the words and phrases that make up bigoted epithets simply do not always have one meaning such that society can ban the word or phrase from verbal commerce and feel confident that it will not impede society's ability to communicate completely. n92 Perhaps Humpty Dumpty had the luxury to say, When I use a word ... it means exactly what I want it to mean - neither more nor less, n93 but we do not. Supreme Court Justice Stewart stated that he could not define obscenity (in fact, he stated that it may not be possi- ble to define it), but, he said, I know it when I see it. n94 Campus administrators will face the same inability to define what they are trying to censor, and it is a risky proposition to hope that they will know it when they see it. The Supreme Court has emphasized the government's inability to be a fair and competent censor. n95 **Just as the Court has pointed out democratic governments' inability to proscribe speech acceptably and denied governments the right to censor even in situations in which a substantial majority agrees that a certain expression is worthless or harmful, n96 students, faculty, and administrators alike must likewise deny anyone the ability to proscribe categories of speech within the university, no matter how odious the speech. Following are some examples of the University of Michigan speech code, which seemed at the outset to be in the campus' best interest but, in the course of its application, clearly became excessive censorship**. The speech code was accompanied by an interpretive guide which defined as unacceptable a male making disparaging remarks in class such as "women just aren't as good in this field as men.' n97 Also violative of the code was a man demanding that his gay roommate be tested for AIDS. One student was disciplined under the speech code when he stated in a research class that he believed homosexuality was a disease and that he intended to develop counseling to change gay clients' sexual pref- erence. Finally, another student was counseled because he made a statement during a dentistry class orientation session that he had heard that minorities had a difficult time in the course and that he had heard that they were not treated fairly. While it is true that these remarks have the potential to result in injury, they are remarks that on their face seem to have been offered out of a legitimate belief or concern and not to have been calculated to injure. The comments may be false or ignorant, but it would be better to air them and challenge them publicly, so that society can arrive at the truth of the matter asserted in them. **Students under the University of Wisconsin-Madison speech code filed complaints about incidents so trivial that the associate dean stated that he was alarmed that people were so willing to use rules to censor objectionable speech**... That the law had high hurdles was missed. It has even been suggested that law students should not study judicial decisions reflecting negative stereotypes. Surely the intent of such suggestions is to prevent the perpetuation of stereotypes. However, these proponents fail to recognize that these judicial opinions disclose not only the history of prejudice in this country but also the plight of women and minorities in the legal system today. These lessons are invaluable and need to be acknowledged. Through these lessons we are able to start to avoid this prejudice in the future. These are not problems which should be hidden from law students, who will soon enter the legal system and have the opportunity and ability to change it. In discussing a university administration's ability to censor only injurious speech, it is important to recognize the possibility that in the course of censorship university administrations may prohibit statements that are true. John Stuart Mill noted: The opinion which it is attempted to suppress by authority may possibly be true. Those who desire to suppress it, of course deny its truth, but they are not infallible. They have no authority to decide the question for all mankind, and ex- clude every other person from the means of judging. Professor Matsuda argues that, under principles of academic freedom and free expression, ignorant views need not be heard, but academically tenable views should be. n103 But how are the censors to know when a view is academically tenable and when it is ignorant? Certainly one cannot argue that governments, legal systems, and nations have not been wrong before. One need only remember the great minds who contended that the earth was flat or that slaves were not people under the U.S. Constitution n104 to remind oneself that even very closely held propositions may be false. Besides fears that certain ideas, true and false, may be expunged from the marketplace, speech codes will also indi- rectly eliminate acceptable ideas from the marketplace. The movement to control speech ... has a sinister side... The chilling effect on those who are concerned about potential punishment ... will surely stifle the free and robust exchange of ideas that is so critical to the campus climate. n105 **Even if administrators can devise a code that prohibited only the right amount of speech and allows all speech necessary for academic debate, the mere threat of penalty will have a chilling effect**. n106 This deterrence effect will be especially strong under codes which use the contextual method or bal- ancing test to determine whether certain speech is sanctionable, because these codes offer only vague definitions of what is permitted and what is prohibited. Thus, under these codes students and faculty will not offer certain ideas that are unpopular or inflammatory but nonetheless permitted and encouraged, because the students and faculty members will be unsure whether they will be free of sanction for presenting those ideas. The political correctness movement has already forced students and faculty to filter their expression and keep some opinions to themselves. Many college students today already feel as though the atmosphere of free discourse, criticism and inquiry at universities is not what it should be. n107 Even law school professors have reported an unwilling- ness among students to even argue hypothetically for the "wrong' side in matters that touch on political correctness be- cause they fear being labeled an -ist of some sort. The P.C. movement has created an atmosphere of campus repres- sion in the name of sensitivity. Students have to walk on eggshells and a number of well-respected professors have dropped courses that touch on controversial topics. This movement then acts as informal speech regulation with informal sanctions. Students are deterred from speaking up in class out of fear that their classmates will hiss at them and that they will be shunned and excluded as some sort of a bigot. Faculty members, while recognizing the importance of selling both sides of a debate to students, may be deterred from backing one side or the other because they fear that con- troversy may affect tenure decisions. People are perfectly willing to restrict speech when it serves their own agendas; speech codes will give people so inclined the ability to do so. Speech codes will formalize restrictions on the expression of opinions. They will add height to the hurdles set up by the P.C. movement and intensify this already unfortunate deterrent. Educators and administrators should address this problem by attempting to diminish the pressures that political correctness has created, thereby increasing the speech on university campuses. Speech codes do just the opposite. One example of a code that deterred free and open debate was the University of Michigan speech code. As men- tioned above, the code came with an interpretive guide which defined as violative a statement suggesting that women were not as good in a certain field as men. A teacher's assistant testified that he wished to discuss questions relating to sex and race differences in his capacity as a teaching assistant in Psychology 430, Comparative Animal Behavior. He stated that hypotheses regarding sex differences and mental abilities suggested that men as a group do better than wom- en in some spatially related mental tasks, and that this was an appropriate topic to discuss. But he stated that he was afraid to speak to the class about these differences because he feared he might be charged with a violation of the speech Policy. n111 These theories seem academically tenable and would be allowed under Matsuda's rule. The univer- sity might encourage discussion on these theories but the teaching assistant was deterred from offering them because he feared sanction under the speech code. Thus even if administrators created a code that authorized all academically tena- ble theories and ideas offered during reasoned debate, it is probable that many of these theories and ideas might still be deterred indirectly by the code. University environments do not need speech codes to add formality and intensity to the informal regulations and deterrents that already exist. Universities should avoid speech codes because they will reduce the amount of speech on the campus. n112 University administrators should seek to increase the speech.

#### Byrne’s proposal can’t solve the case – bigoted expressions still mean different things to different people and can backfire.

**Herron:** Herron, Vince [Class of 1994, University of Southern California Law Center. B.A. 1990, University of California, Los Angeles.] “NOTES: INCREASING THE SPEECH: DIVERSITY, CAMPUS SPEECH CODES, AND THE PURSUIT OF TRUTH.” Southern California Law Review. January 1994. RP

Not only do codes suppress ideas which we find profane and unacceptable, but they often censor ideas that should not be censored, ideas which play a legitimate role in academic discourse and should be kept in the university market- place. Opponents of hate speech codes who argue that censorship is bad for the educational environment are pessimistic about the ability of university administrators to censor certain forms of expression without the censorship's de- generating into an attempt to suppress political opposition or cultural differences. But some proponents have argued that codes can selectively censor only ideas which do not play a legitimate role in discussion. They argue that censorship enforced by campus administrators should not be worrisome, because codes are neither attempts by the government to censor political ideas nor attempts to perpetuate majority groups' power over minority groups. This type of censorship is initiated by university administrators solely to further the valid goals of education and scholarship. These proponents must be suggesting, then, that it is possible for university administrators, by exercise of judgment, to promulgate speech codes that only prevent the right amount of speech and will not lead down a slippery slope into gross censorship. This is a dangerous proposition. Surely those proponents of speech codes cannot deny that this nation, throughout its history, has fought censorship that at first seemed innocent and in the public interest but later became excessive. **If we put the power of censorship in the hands of a university administration, we place the university at the mercy of the morals, ethics, and judgment that those administrators possess**. We cannot trust them to be able to proscribe only speech which they do not believe belongs in the university. No one group, and no one set of values, has a monopoly on truth. **The difficulty that administrators face in promulgating speech codes that proscribe only the right amount of speech stems from their inability to articulate a useable definition which distinguishes unacceptable, injury-causing speech from speech which is necessary in academic discourse and which incidentally causes injury.** Without this distinction, administrators are impotent to draw an appropriate boundary inside which censorship is unacceptable, but outside which censorship is not. Those who codify the speech policy are not able to single out a few words or expressions that inflame racial and other tensions and guarantee that those words or phrases have neither value nor an appropriate place in academic debates and formal conversations. **Peter Byrne suggests that racial insults have little or no social value and that not even the staunchest supporter of the most absolute view of first amendment protection argues that racial insults have any significant social or individual value. But what Byrne fails to note is that the words and phrases that make up bigoted epithets simply do not always have one meaning such that society can ban the word or phrase from verbal commerce and feel confident that it will not impede society's ability to communicate completel**y. Perhaps Humpty Dumpty had the luxury to say, When I use a word ... it means exactly what I want it to mean - neither more nor less, but we do not. Supreme Court Justice Stewart stated that he could not define obscenity (in fact, he stated that it may not be possible to define it), but, he said, I know it when I see it. **Campus administrators will face the same inability to define what they are trying to censor, and it is a risky proposition to hope that they will know it when they see it. The Supreme Court has emphasized the government's inability to be a fair and competent censor. Just as the Court has pointed out democratic governments' inability to proscribe speech acceptably and denied governments the right to censor even in situations in which a substantial majority agrees that a certain expression is worthless or harmful, students, faculty, and administrators alike must likewise deny anyone the ability to proscribe categories of speech within the university, no matter how odious the speech.**

### Giroux – Barbarians at the Gates

#### Privatization is bad

**Giroux:** Giroux, Henry A. [Waterbury Chair Professor, Pennsylvania State University] “Henry A. Giroux | Barbarians at the Gates: Authoritarianism and the Assault on Public Education.” *Truthout.* December 2014. RP

**As public schools are privatized, succumbing to corporate interests, critical thought and agency are erased, and education emphasizes market values rather than democratic ideals. The emergence of larger radical social movements depends on public education maintaining its role as a democratic sphere.** Once 2015 begins both the US Senate and House of Representatives will be controlled by the Republican Party, one of the most extremist political parties in US history. (1) Coupled with the empty centrism of the Democratic Party, its ascendency does not bode well for public education or a host of other important social issues. Nor does it bode well for democracy. If we conjured up George Orwell and his fear of state surveillance, Hannah Arendt and her claim that thoughtlessness was the foundation of totalitarianism, and Franz Kafka whose characters embodied the death of agency and the "helplessness of the living," (2) it would be difficult for these dystopian works of literary and philosophical imagination to compete with the material realization of the assault on public education and public values in the United States at the beginning of the 21st century**. These are dangerous times. Compromise and compassion are now viewed as a pathology, a blight on the very meaning of politics. Moreover, in a society controlled by financial monsters, the political order is no longer sustained by a faith in reason, critical thought and care for the other. As any vestige of critical education, thought and dissent are disparaged, the assault on reason gives way to both a crisis in agency and politics.** The right-wing Republican Party and their Democratic counterparts, along with their corporate supporters, despise public schools as much as they disdain taxation, institutions that enable critical thinking, and any call for providing social provisions that would benefit the public good. **Not only are both parties attempting to privatize much of public education in order to make schools vehicles for increasing the profits of investors, they are also destroying the critical infrastructures that sustain schools as democratic public spheres. The educational needs of students for many Republican and Democratic Party members, pundits, lobbying groups and politicians rank low next to the financial needs of hedge fund managers. Teachers have been deskilled. Losing much of their autonomy to be creative in the classroom, they have been relegated to technicians whose sole objective appears to be enforcing a deadening instrumental rationality in which teaching to the test becomes the primary model of teaching and learning.** Moreover, they are being demonized by the claim that the major problem with public education is lack of teacher accountability. The hidden order of politics here is that larger political and economic considerations such as crushing poverty, mammoth inequality, a brutalizing racism and iniquitous modes of financing public education all disappear from the list of problems facing schooling in the United States. Teachers also serve as an easy target for the (un)reformers to weaken unions, bash organized labor, discredit public servants, and "argue that education can be improved if taxpayer money is funneled away from the public school system's priorities (hiring teachers, implementing creative pedagogies, increasing teacher autonomy, reducing class size etc.) and into the private sector (replacing teachers with computers, replacing public schools with privately run charter schools etc.)." (3) **These policies and practices echo the principles of casino capitalism or neoliberalism and are designed to enforce a pedagogy of repression, one that kills the imagination, sanctions a deadening mode of memorization and instills in students the discipline necessary for them to accommodate willingly to existing power relations at the expense of developing their capacity to be critical and engaged agents**. In this case, the aim of this pedagogy of repression mimics Hannah Arendt's claim that "The aim of totalitarian education has never been to instill convictions but to destroy the capacity to form any." (4) Public schools are also being defunded as states increasingly develop policies that drain **state budgets by giving corporations substantial tax breaks. Diane Ravitch elaborates on the right-wing agenda to destroy public education, which consists of a range of groups ranging from right-wing politicians to shadowy groups such as the American Legislative Exchange Council (ALEC).** She is worth quoting in full: Since the 2010 elections, when Republicans took control of many states, there has been an explosion of legislation advancing privatization of public schools and stripping teachers of job protections and collective bargaining rights. Even some Democratic governors, seeing the strong rightward drift of our politics, have jumped on the right-wing bandwagon, seeking to remove any protection for academic freedom from public school teachers. This outburst of anti-public school, anti-teacher legislation is no accident. It is the work of a shadowy group called the American Legislative Exchange Council, or ALEC. Founded in 1973, ALEC is an organization of nearly 2,000 conservative state legislators. Its hallmark is promotion of privatization and corporate interests in every sphere, not only education, but healthcare, the environment, the economy, voting laws, public safety, etc. It drafts model legislation that conservative legislators take back to their states and introduce as their own "reform" ideas. ALEC is the guiding force behind state-level efforts to privatize public education and to turn teachers into at-will employees who may be fired for any reason. The ALEC agenda is today the "reform" agenda for education. (5) The educational needs of students for many Republican and Democratic Party members, pundits, lobbying groups and politicians rank low next to the financial needs of hedge fund managers; the ultra-rich such as Bill Gates, the Walton family and the Koch brothers; the legislators who make up ALEC; and any number of major corporations. Individual achievement is invoked to justify education as a private right rather than as a public good. The discourses of empiricism and standardized testing become the ultimate measures of achievement just as pedagogical matters concerning civic responsibility, engaged citizenship, thoughtfulness and critical thought disappear from the vocabulary of educational reform. Under the regime of neoliberalism, community and working together are viewed as burdens because they are at odds with the neoliberal celebration of a survival-of-the-fittest ethos. Paul Buchheit goes even further arguing that "Privatizers believe that any form of working together as a community is anti-American." (6) In this instance, the labeling of community and caring for the other as anti-American has deeper political roots. As Robert Hunziker observes, "As for neoliberalism, its dictate of 'survival of the fittest economics' is really 'bottom-feeder economics' whereby the rich accumulate more and more and more at the expense of lower and lower and lower wages, less benefits, and crushed self-esteem. What could be worse?" (7) Equality, justice and the search for truth no longer define the mission of public education. Defunding for public education has gotten so out of control that, as Aaron Kase reports, one public school in Philadelphia asked parents to "chip in $613 per student just so they can open with adequate services, which if it becomes the norm, effectively defeats the purpose of equitable public education, and is entirely unreasonable to expect from the city's poorer neighborhoods." (8) Equality, justice and the search for truth no longer define the mission of public education. Economic policies that benefit the bankers, corporations and the financial elite result in massive inequities in wealth, income and power and increasingly determine how the US public views both public education and the needs of young people. As market economies are transformed into market societies, the investment in human capital such as young people has been replaced by an overdetermined emphasis on investing in economic capital. Unchecked market fundamentalism now eats its own children while destroying any viable hope they may have for being included in the social and political infrastructure of democracy and a future that benefits them. (9) Moreover, the rights of teachers and children are more difficult to protect as unions are either dismantled or weakened by the apostles of neoliberalism and privatization. Secondary education is no longer a right but an entitlement designed mostly to benefit the children of the rich who either flee from public schools to wealthy private schools or attend public schools in wealthy communities that more often than not resemble private schools in terms of how they segregate by class and race, cater to the whims of the rich and enshrine values that are consistent with the market. Schooling for poor people and people of color defined by the school-to-prison-pipeline has come to represent an appendage of the carceral state. **This is not only an attack on public education, but an attack on democracy itself. The infrastructure of education has been under assault since the 1980s with the advent of market fundamentalism in the United States and the growing disdain for the welfare state, the public good and public values**. By infrastructure, I am referring to the material, financial and intellectual resources necessary for public schools to be able to function in ways that protect teacher autonomy, encourage viable unions, create curricula that are both critical and meaningful, and produce modes of critical pedagogy that truly embrace education as the practice of freedom and young people as critical agents and engaged citizens necessary for making democracy meaningful and substantive. The shadow of Orwell now haunts public education and democracy itself as the political defenders of torture and state surveillance take control of Congress. As lawlessness and moral depravity infect all modes of governance, the push toward treating public schools, especially in low-income neighborhoods, as prisons, and students as objects of surveillance and control has become more widespread. The presence of police, guards, cameras, and a host of surveillance and security apparatuses has turned schools into incubators for students willing to surrender their freedoms to the national security state. The ghost of Kafka disturbs any vision of democratic education as fear becomes the operative principle in organizing public education, especially for schools largely inhabited by poor people and people of color. For the underserved, education is designed not to inspire and energize, nor is it designed to get students to think, reflect or question. On the contrary, such schools disable the capacities of students to become knowledgeable, informed speaking agents. Instead, it relegates them to the dreary pedagogical tasks of mastering low-level skills such as memorization, a willingness to conform and a refusal to question authority. This is more than a pedagogy of repression; it is a pedagogy of helplessness that infantilizes students while dethroning any relationship between learning and social change. Schools have become punishing factories subjecting students to zero-tolerance policies that three decades ago were only tolerated in prisons. Schools have become punishing factories subjecting students to zero-tolerance policies that three decades ago were only tolerated in prisons. (10) Security has been turned into a police matter rather than a term that points to pedagogies, classroom policies, emotional support and modes of administration that provide spaces that dignify students, invest in their welfare, encourage them to expand their capacities for learning and embrace pedagogies that are meaningful, critical and transformative. Schools no longer are viewed as places that create dreams of greatness, extend the horizons of the imagination or point to a future that refuses to mimic the present. On the contrary, they are increasingly held hostage both to the market values embraced by the corporate and financial elite and the fundamentalist ideologies of religious conservatives. It gets worse. Orwell's premonition about state induced surveillance and Kafka's understanding of the danger of powerlessness encouraged by regimes of fear are now matched by Arendt's warning that human subjectivity is the foundation of politics and that any threat to critical thought, especially through a culture that directs desire into the most trivial of pursuits and anti-intellectual modes of learning, is as dangerous to democracy as the heavy hand of state repression. Although Arendt did not use the phrase "radical imagination" to bring home her warning about the crisis and death of critical agency, that is exactly what is being destroyed in the testing factories and penal warehouses replacing public education. As the imagination no longer becomes the subject and object of learning, thoughtlessness expands, as does the foundation for creating students more suited for a totalitarian regime than for a struggling democracy. Totalitarian governments believe that thinking is dangerous and rightly so. As Arendt points out, Everything which happens in thinking is subject to a critical examination of whatever there is. That is, there are no dangerous thoughts for the simple reason that thinking itself is such a dangerous enterprise. So how I can convince . . . I think, nonthinking is even more dangerous. I don't deny that thinking is dangerous, but I would say not thinking, ne pas reflechir c'est plus dangereux encore [not thinking is even more dangerous]. (11) In the new Gilded Age with its growing economic divisions, vast punishing state, criminalization of social behaviors, and war on youth, poor people and people of color, public education is being destroyed. **Against the prevailing anti-democratic reforms of the economic and religious fundamentalists, the noble belief in schools as democratic public spheres and in schooling as the center of critical thinking and learning needs to be reclaimed, struggled over and taken up as part of a larger social movement for the defense of the public good, public values and the democratic commons. It is precisely the concept of education as a building block for both critically engaged youth and a broader public, and for a radical politics, that inspires a great deal of fear in the billionaire, anti-public (un)reformers.** (12) Within the next decade the new extremists who now control the commanding institutions of culture, politics and economics will do everything they can to replace a weakly implemented ideal of democracy with the economic and social principles of a ruthless mode of casino capitalism, which constitutes a new form of authoritarianism. Public spheres that provide a challenge to market-driven fundamentalisms that "promote selfishness and thereby corrode both society and the moral character of individuals" will be under further assault and run the risk of disappearing altogether. (13) As selfishness and the amassing of great wealth and power are transformed by the new extremists into a civic virtue, agency itself withers, trapped within the orbit of an inward looking, privatized world. But there is more at stake here than the collapse of public values and the destruction of a comprehensive vision of politics, largely under assault by the ongoing predatory market forces of commodification, privatization and an unchecked celebration of self-interests as the cornerstone of human agency. Racist killings, the loss of privacy, the rise of the surveillance state, growing poverty and widening inequality, the increasing corporatization of public goods, and the depleting of resources that serve the commons all point to something more than the mounting privatization and atomizing of everyday life, along with the growing militarization, spying, xenophobia, racism and other anti-democratic practices in US society. What must be acknowledged is that a pedagogy of fear and repression now leaks into other spheres to stifle dissent, punish those who speak out such as academic Steven Salaita, who lost his job because he dared speak out against what he viewed as an injustice by the Israeli government, and the egregious attack on radical attorneys such as Stanley Cohen and Lynn Stewart, who have been incarcerated for speaking in defense of the those who resist repression and are demonized by the government. In this instance, the ghosts of Orwell, Kafka and Arendt all point to an attack on, not just education or the formative cultures that support dissent, critical thought and engaged civic action, but democracy itself. It is impossible to understand the current assault on public education without coming to grips with the project of neoliberalism. What unites all of these disparate issues is a growing threat of authoritarianism - or what might be otherwise called totalitarianism with elections. Neoliberal societies embrace elections because they "exclude and alienate most people from political power" and thus provide a kind of magical defense for the authoritarian project of depoliticizing the public while removing all obstacles to their goal of defending massive inequities in power, wealth and the accumulation of capital. (14) It is impossible to understand the current assault on public education without coming to grips with the project of neoliberalism and its devaluation of the social, critical agency and informed thinking as part of its attempt to consolidate class power in the hands of a largely white financial and corporate elite. The struggle for public education as a crucial civic resource and public good must continue through the large-scale organizing of teachers and labor unions, students and groups outside of education who are also struggling against a range of injustices. The struggle over public education cannot be removed from wider struggles against student debt, funding for public goods, the elimination of massive inequalities in wealth and power, the elimination of the military-industrial-security state, the abolition of police brutality, and the eradication of the punishing-mass incarceration state, among other struggles. These struggles all share underlying interests in restoring and reclaiming a notion of radical democracy that puts power in the hands of the people rather than in the hands of the ruling elites. They also intersect around the need to elevate social needs over the narrow interests of the market and those elites who benefit from the financialization of society. As the ruthlessness and misery produced by neoliberalism are made clear, the state resorts to increased levels of violence, often with impunity, particularly when it comes to attacking peaceful student protesters, and assaulting and often killing unarmed black men. (15) At the present moment, large-scale protests are taking place throughout the United States making clear that the public will no longer tolerate the indiscriminate killing of black men, the enforcement of racist policies across a wide social landscape, unrestrained police brutality and the continuing of widespread lawlessness that corrupts every institution - and schools in particular - that have been privatized and organized according to the narrow, if not savage and anti-democratic, interests of the market. The ongoing protests in response to the killing of Michael Brown, in Ferguson, Missouri, Eric Garner in New York City, and 12-year-old Tamir Rice in Cleveland, Ohio, and the non-indictments of police officers who killed them, must intersect with protests over the defunding of public schools, the attack on welfare state institutions and services, the movement to save the environment, the anti-nuclear movements and a host of other isolated movements that need to join together in a new political formation capable of challenging the financial elite who have taken over the US government and all the commanding institutions of US society. The "Hands Up, Don't Shoot" and "I Can't Breathe" protests must overlap and connect with the struggle over public and higher education and the broader struggle for reclaiming a democracy that fulfills both its most radical ideals and its commitment to the common good, public values and a capacious notion of justice. The Obama administration's educational policies have been more conservative than that of his predecessor and are based on accountability schemes that reproduce the worst of the testing craze. The best hope for reforming public education resides in the emergence of what Stanley Aronowitz calls "disruptive social movements that operate outside of the two-party system." (16) Young people, single women, gays, students, union members, and other left groups no longer believe in either the Democratic Party or the two-party system. How else to explain their massive refusal to vote in the 2014 elections, which had the lowest voter turnout since 1943? As Aronowitz points out, for the last few decades, the Democratic Party has been particularly beholden to big money, wealthy donors and the Pentagon, and has pursued "centrist politics that allow them to follow the Republicans ever further to the right." (17) President Obama personifies the political and moral cowardice of the Democratic Party given his violation of civil liberties and civil institutions, the development of a foreign policy that amounts to a doctrine of perpetual war, and his backing of "corporate-friendly economic policies." (18) Moreover, the Obama administration's educational policies have been more conservative than those of his predecessor George W. Bush and are based on accountability schemes that reproduce the worst of the testing craze along with an aggressive approach to promoting charter schools, attacking unions and privatizing public education. The current "disruptive social movements" emerging all over the country have not only opened up a national conversation about police brutality; they have also challenged the "conventional wisdom about what is possible" politically, and if they continue, they could produce more far-reaching changes. (19) Both the movements against police brutality and the now largely defunct Occupy movement have provided new discursive signposts for acknowledging important social issues such as racially based police brutality and massive inequality in wealth, income and power. Central to these movements is the recognition of the educative nature of politics and the need to harness the rage of the public to points of identification that move people and indicate to them that they have the power collectively to challenge and transform the current corrupt regime of neoliberal capitalism. These movements have created new ideological and affective spaces in which to assert the radical imagination and develop a project and politics of educated hope. Making education and the symbols of culture central to their tactics, they have engaged in a war in which representation, affect, struggle and the need to produce new desires, identities, and modes of consciousness and agency matter. But they have done something more. These emerging movements are taking risks in not only confronting the raw power of state repression; they are also putting forth bold new and controversial issues such as gay marriage, the legalization of marijuana, the call for a social wage, single-payer universal health care, a shorter work week, the dismantling of the surveillance state, a new Marshall Plan for job development, free education, subsidized child care and racial justice. Some progressives believe that one response to the extremism of the Republican Party can be found in pushing the Democratic Party to embrace more radical reforms such as gay marriage and raising the minimum wage. The notion that real political, economic and social reform can be realized within the Democratic Party is more than pure fantasy; it also suffers from a form of historical amnesia that refuses to recognize that the only "reform the Democratic Party has implemented is to move more and more to the right, all in the name of a safe centrism that has marked its legacy for the last fifty years." (20) **At its best, education is dangerous because it offers young people and other actors the promise of racial and economic justice, a future in which democracy becomes inclusive and a dream in which all lives matter**. What Orwell, Arendt and Kafka have taught us is that when power is decoupled from accountability and responsibility, thoughtlessness prevails, repression increases and fear becomes the organizing principle of totalitarian societies, whatever form they may take. The legacy of fear and the lawlessness it inspires runs deep in the United States and its destructive effects are spreading into every public sphere capable of offering critical reflection on the nature of power in a society. The collapse of education into training, the loss of autonomy by teachers, the removal of the conditions that enable students to be critical and engaged citizens all speak to the character of a society in which independent thought is debased; creativity, stifled; and dissent, squelched. We live in an age dominated by financial barbarians who are more than willing to place the vast majority of Americans in strangulating debt, low paying jobs, devastating poverty and spheres of life-threatening abjection, or, even worse, in "criminogenic ghettoes" and penal gulags. Under such circumstances, the rich commit crimes with impunity while the poor are put in jail in record numbers. Depravity and illegality feed each other as torture is defended by the political leadership as a reasonable tactic to extract crucial information from prisoners. All that stands between state terrorism and mass induced fear are informed citizens, critically educated agents and political formations willing to act with the courage necessary to think politics anew while developing innovative strategies, institutions and organizations that make it possible. Such struggles will not happen in the name of reform alone. Mass resistance to the authoritarian financial state must take place and its goal must be the dismantling of the current corrupt political system that has little to do with democracy and a great deal to do with the values, practices and policies of authoritarianism. Liberal reforms constitute a form of political regression and lack a powerful vision for challenging the corrupt and lifeless political vision produced by the regime of neoliberalism. At the same time, the democratic institutions in which education is defined as the practice of freedom, critical learning and civic responsibility may be under siege by the lobbyists, hedge fund managers and the billionaires club, but the radical spirit of education is too powerful to be contained under state and corporate repression. The promise of educated citizens along with the enduring character of critical reflection and the search for economic, political and racial justice lives on in the demonstrations of workers, unions and young people all across the United States who are not just protesting police brutality, but also marching in order to have their voices heard as part of the promise of a radical democracy along with the arrangements that give it and them a meaningful and just life. At its best, education is dangerous because it offers young people and other actors the promise of racial and economic justice, a future in which democracy becomes inclusive and a dream in which all lives matter. Ursula K. Le Guin who was recently honored at the National Book Awards speaks about the power of books, words and artists who believe in the power of freedom, but I think her words also apply to education and other public intellectuals as well. She writes: Books, you know, they're not just commodities. The profit motive often is in conflict with the aims of art. We live in capitalism. Its power seems inescapable. So did the divine right of kings. Any human power can be resisted and changed by human beings. Resistance and change often begin in art, and very often in our art - the art of words. I think hard times are coming when we will be wanting the voices of writers who can see alternatives to how we live now and can see through our fear-stricken society and its obsessive technologies to other ways of being, and even imagine some real grounds for hope. We will need writers who can remember freedom. Poets, visionaries - the realists of a larger reality. (21) Le Guin's words remind us of the power of education and point indirectly to the need to resist all forms of miseducation. Miseducation breeds isolated consumerism, ignorance, militarism, a hatred of the other and indifference to the public good, and feeds a logic of disposability embraced by those who view justice and democracy as a liberal burden, if not a pathology. At its best, the critical and humane spirit of public education lives on in the future of social movements and militant labor unions willing to unify into a third party, create a new language of politics, defend those civic principles that are incompatible with casino capitalism and recognize that the most important investment a country can make is in its youth and educational institutions. **The war on public education is part of the war on democracy and it is, in part, born of the legitimate fear that the emergence of larger radical social movements will depend on the development of a formative educational culture and modes of subjectivity that enable the agents for such movements. That is a concern worth nurturing and a struggle worth waging, but time is running out.**

### Giroux – Why Teachers Matter

#### Importance of teachers

**Giroux:** Giroux, Henry A. [Waterbury Chair Professor, Pennsylvania State University] “Henry A. Giroux | Why Teachers Matter in Dark Times.” *Truthout.* May 2016. RP

**Americans live in a historical moment that annihilates thought. Ignorance now provides a sense of community; the brain has migrated to the dark pit of the spectacle; the only discourse that matters is about business; poverty is now viewed as a technical problem; thought chases after an emotion that can obliterate it. The presumptive Republican Party presidential nominee, Donald Trump, declares he likes "the uneducated" -- implying that it is better that they stay ignorant than be critically engaged agents -- and boasts that he doesn't read books**. Fox News offers no apologies for suggesting that thinking is an act of stupidity. **A culture of cruelty and a survival-of-the-fittest ethos in the United States is the new norm and one consequence is that democracy in the United States is on the verge of disappearing or has already disappeared! Where are the agents of democracy and the public spaces that offer hope in such dark times? Many are in public schools -- all the more reason to praise public school teachers and to defend public and higher education as a public good. For the most part, public school teachers and higher education faculty are a national treasure and may be one of the last defenses available to undermine a growing authoritarianism, pervasive racism, permanent war culture, widening inequality and debased notion of citizenship in US society. They can't solve these problems but they can educate a generation of students to address them. Yet, public school teachers, in particular, are underpaid and overworked, and lack adequate resources. In the end, they are unjustly blamed by right-wing billionaires and politicians for the plight of public schools**. In order to ensure their failure, schools in many cities, such as Detroit and Philadelphia, have been defunded by right-wing legislators. These schools are dilapidated -- filled with vermin and broken floors -- and they often lack heat and the most basic resources. **They represent the mirror image of the culture of cruelty and dispossession produced by the violence of neoliberalism**. Under the counterfeit appeal to reform, national legislation imposes drill-and-test modes of pedagogy on teachers that kill the imagination of students. Young people suffer under the tyranny of methods that are forms of disciplinary repression. **Teachers remain powerless as administrators model their schools after prisons and turn students over to the police. And in the midst of such egregious assaults, teachers are disparaged as public servants**. The insecure, overworked adjunct lecturers employed en masse at most institutions of higher education fare no better. They have been reduced to an army of indentured wage slaves, with little or no power, benefits or time to do their research. Some states, such as Texas, appear to regard higher education as a potential war zone and have passed legislation allowing students to carry concealed weapons on campus. That is certainly one way to convince faculty not to engage in controversial subjects with their students. With the exception of the elite schools, which have their own criminogenic environments to deal with, higher education is in free fall, undermined as a democratic public sphere and increasingly modeled after corporations and run by armies of administrators who long to be called CEOs. All the while the federal government uses billions of dollars to fuel one of the largest defense and intelligence budgets in the world. **The death machine is overflowing with money while the public sector, social provisions and public goods are disappearing**. At the same time, many states allocate more funds for prisons than for higher education. Young children all over the country are drinking water poisoned with lead, while corporations rake in huge profits, receive huge tax benefits, buy off politicians and utterly corrupt the political system. Trust and compassion are considered a weakness if not a liability in an age of massive inequities in wealth and power. In the midst of what can only be viewed as a blow against democracy, right-wing Republicans produce slash-and-burn policies that translate into poisonous austerity measures for public schools and higher education. As Jane Mayer points out in Dark Money, the Koch brothers and their billionaire allies want to abolish the minimum wage, privatize schools, eliminate the welfare state, pollute the planet at will, break unions and promote policies that result in the needless deaths of millions who lack adequate health care, jobs and other essentials. Public goods such as schools, according to these politicians and corporate lobbyists, are financial investments, viewed as business opportunities. For the billionaires who are the anti-reformers, teachers, students and unions simply get in the way and must be disciplined. We need to invest as much, if not more, in education as we do in the military-industrial complex. Public schools and higher education are "dangerous" because they hold the potential to serve as laboratories for democracy where students learn to think critically. Teachers are threatening because they refuse to conflate education with training or treat schools as if they were car dealerships. Many educators have made it clear that they regard teaching for the test and defining accountability only in numerical terms as acts that dull the mind and kill the spirit of students. Such repressive requirements undermine the ability of teachers to be creative, engage with the communities in which they work and teach in order to make knowledge critical and transformative. The claim that we have too many bad teachers is too often a ruse to hide bad policies and to unleash assaults on public schools by corporate-driven ideologues and hedge fund managers who view schools strictly as investment opportunities for big profits. We need to praise teachers, hold them to high standards, pay them the salaries they deserve, give them control over their classrooms, reduce class sizes and invest as much, if not more, in education as we do in the military-industrial complex. **This is all the more reason to celebrate and call attention to those teachers in Chicago, Detroit and Seattle who are collectively fighting against such attacks on public schools. We need to praise them, learn from them and organize with them because they refuse to treat education as a commodity and they recognize that the crisis of schooling is about the crises of democracy, economic equality and justice**. This is not a minor struggle because no democracy can survive without informed citizens. Neoliberal education is increasingly expressed in terms of austerity measures and market-driven ideologies that undermine any notion of the imagination, reduce faculty to an army of indentured labor and burden students with either a mind-numbing education or enormous crippling debt or both. If faculty and students do not resist this assault, they will no longer have any control over the conditions of their labor, and the institutions of public and higher education will further degenerate into a crude adjunct of the corporation and financial elite. Clearly, it is time to revisit [Mario Savio's famous speech](https://www.youtube.com/watch?v=KJKbDz4EZio) at Berkeley in 1964 when he called for shutting down an educational system that had become odious. In his own words: There comes a time when the operation of the machine becomes so odious, makes you so sick at heart, that you can't take part, you can't even passively take part; and you've got to put your bodies upon the gears and upon the wheels, upon the levers, upon all the apparatus, and you've got to make it stop. And you've got to indicate to the people who run it, the people who own it, that unless you're free the machine will be prevented from working at all. Savio's call to resistance is more relevant today than it was then. Public schools not only mimic the injustices of an oppressive economic system, but also funnel poor youth of color into the criminal legal system. The good news is that there is an echo of outrage and resistance now emerging in the United States, especially among young people such as those in the Black Lives Matter movement. If the major index of any democracy is measured by how a society treats its children, the United States is failing. Fortunately, more and more people are waking up and realizing that the fight for public schooling is not just about higher salaries for teachers; it is about investing in our children and in democracy itself. At the same time, we live in what author Carl Boggs and others have called a permanent warfare state, one in which every space appears to be a battlefield, and the most vulnerable are viewed not only as an imminent threat, but also as the object of potential violence. **This suggests that the battle of education must become part of a wider political struggle. This is a struggle that connects assaults on education with the broader war on youth, police violence with the militarization of society and specific instances of racist brutality with the unchecked exercise of the systemic power of finance capital**. But the struggle will not be easy. If the major index of any democracy is measured by how a society treats its children, the United States is failing. Beneath all of the current brutality, racism and economic predation, there is some hope inspired by the generation of young people who are protesting police violence and the attack on public and higher education and working hard to invent a politics that gets to the root of issues. There is also a glimmer of possibility in those youth who have supported Bernie Sanders but are really demanding a new and more radical definition of politics: Their vision far surpasses that of the left-centrists and liberals of the Democratic Party. Elections are the ruse of capitalism, and that has never been more clear than at the present moment. On the one side we have Hillary Clinton, a warmonger, a strong supporter of the financial elite and a representative of a neoliberalism that is as brutal as it is cruel. On the other side we have Donald Trump, a [circus barker](http://www.truth-out.org/opinion/item/35616-donald-trump-is-the-new-p-t-barnum) inviting Americans into a den of horrors. And these are the choices that constitute democracy? I don't think so. Collective self-delusion will only go so far in the absence of an education system that offers a space for critical learning and dissent, and functions as a laboratory for democracy. There is a tendency to forget in an age dominated by the neoliberal celebration of self-interest and unchecked individualism that public goods matter, that critical thinking is essential to an informed public and that education at the very least should provide students with unsettling ruptures that display the fierce energy of outrage and the hope for a better world. But a critical education has the capacity to do more. It also has the power not only to prevent justice from going dead in ourselves and the larger society, but also, in George Yancy's poetic terms, to teach us how to "love with courage." Hopefully, while education cannot solve such problems, it can produce the formative cultures necessary to enable a generation of young people to create a robust third party -- a party fueled by social movements demanding the economic and political justice that could allow a radical democracy to come to life.

### Delgado and Ross

#### Student movements can create counter-hegemony with radical anti-capitalist organization on a broad scale.

**Delgado and Ross:** Sandra Delgado and E. Wayne Ross [Delgado is a doctoral student in Curriculum Studies at the University of British Columbia and Ross is a Professor in the Faculty of Education at the University of British Columbia] “Students in Revolt: The Pedagogical Potential of Student Collective Action in the Age of the Corporate University.” 2016. RP

As students’ collective actions keep gaining more political relevance, student and university movements also establish themselves as spaces of counter-hegemony (Sotiris, 2014). **Students are constantly opening new possibilities to displace and resist the commodification of education offered by mainstream educational institutions. As Sotiris (2014) convincingly argues, movements within the university have not only the potential to subvert educational reforms, but in addition, they have become “strategic nodes” for the transformation of the processes and practices in higher education, and most importantly for the constant re-imagination and the recreation of “new forms of subaltern counter-hegemony**” (p. 1). The strategic importance of university and college based moments lays precisely in the role that higher education plays in contemporary societies, namely their role in “the development of new technologies, new forms of production and for the articulation of discourses and theories on contemporary issues and their role in the reproduction of state and business personnel.” (p.8) **Universities and colleges therefore, have a crucial contribution in “the development of class strategies** (both dominant and subaltern), in the production of subjectivities, (and) in the transformation of collective practices” (p.8) The main objective of this paper is to examine how contemporary student movements are disrupting, opposing and displacing entrenched oppressive and dehumanizing reforms, practices and frames in today’s corporate academia. This work is divided in four sections. The first is an introduction to student movements and an overview of how student political action has been approached and researched. The second and third sections take a closer look at the repertoires of contention used by contemporary student movements and propose a framework based on radical praxis that allows us to better understand the pedagogical potential of student disruptive action. The last section contains a series of examples of students’ repertoires or tactics of contention that exemplifies the pedagogical potential of student social and political action. An Overview of Student Movements Generally speaking, students are well positioned as political actors. They have been actively involved in the politics of education since the beginnings of the university, but more broadly, students have played a significant role in defining social, cultural and political environments around the world (Altbach, 1966; Boren, 2001). **The contributions and influences of students and student movements to revolutionary efforts and political movements beyond the university context are undeniable.** **One example is the role that students have played in the leadership and membership of the political left** (e.g. students’ role in the Movimiento 26 de Julio - M-26-7 in Cuba during the 50’s and in the formation of The New Left in the United States, among others). Similarly, several political and social movements have either established alliances with student organizations or created their own chapters on campuses to recruit new members, mobilize their agendas in education and foster earlier student’s involvement in politics2 (Altbach, 1966; Lipset, 1969). Students are often considered to be “catalysts” of political and social action or “barometers” of the social unrest and political tension accumulated in society (Barker, 2008). **Throughout history student movements have had a diverse and sometimes contradictory range of political commitments. Usually, student organizations and movements find grounding and inspiration in Anarchism and Marxism, however it is also common to see movements leaning towards liberal and conservative approaches**. Hence, student political action has not always been aligned with social movements or organizations from the political left. In various moments in history students have joined or been linked to rightist movements, reactionary organizations and conservative parties (Altbach, 1966; Barker, 2008). Students, unlike workers, come from different social classes and seemly different cultural backgrounds. As a particularly diverse social group, students are distinguished for being heterogeneous and pluralists in their values, interests and commitments (Boren, 2001). Such diversity has been a constant challenge for maintaining unity, which has been particularly problematic in cases of national or transnational student organizations (Prusinowska, Kowzan, & Zielińska, 2012; Somma, 2012). To clarify, social classes are defined by the specific relationship that people have with the means of production. In the case of students, they are not a social class by themselves, but a social layer or social group that is identifiable by their common function in society (Stedman, 1969). The main or central aspect that unites student is the transitory social condition of being a student. In other words, students are a social group who have a common function, role in society or social objective, which is “to study” something (Lewis, 2013; Simons & Masschelein, 2009). Student movements can be understood as a form of social movement (LuesherMamashela, 2015). They have an internal organization that varies from traditionally hierarchical structures, organizational schemes based on representative democracy with charismatic leadership, to horizontal forms of decision-making (Altbach, 1966; Lipset, 1969). **As many other movements, student movements have standing claims, organize different type of actions, tactics or repertoires of contention, 3 and they advocate for political, social or/and educational agendas, programs or pleas.**

### Perry

#### Trump is targeting knowledge production, and professors are in his cross fires – the crackdown has begun on all knowledge that can challenge the hegemonic status quo – this dooms all knowledge production to failure.

**Perry:** Perry, Andre [Contributor, Washington Post] “Saving Academic Freedom from Trump’s ‘Post-Truth’ Nation.” *Washington Monthly.* November 2016. RP

**The world is not flat; dinosaurs didn’t walk with humans and white supremacy is built on a foundation of lies to preserve power and racial hierarchies. If we are going to find cures for cancer, global warming and racism we have to maintaining the integrity of our institutions of learning. Tenure – giving a teacher or professor an appointment until retirement – provides a rewall of protection so our professors and teachers can pursue what makes civilization progress.** Oxford Dictionaries picked “post-truth” as its word of the year for 2016 because so many are choosing narrative over fact. Denying reality can get you elected President of the United States. From refusing climate change to exaggerating voter fraud to promoting birtherism, Trump didn’t just put American electoral politics in peril by denying truth; he puts truth itself at greater risk as his power grows. **Because power is truth’s biggest enemy, the professors and teachers whose jobs are to defend, pursue and teach truth are vulnerable to attack. When our truth tellers lose jobs and/or security, com- munity and education suffers. Just as high school textbooks offered one-sided, nationalistic views on Reconstruction, McCarthyism and the Vietnam War, the fallout of a Trump victory will be felt in college and K-12 classrooms. In particular, colleges and universities provide our nation with the intellectual byproducts for which we use for our cultural and economic growth.** Because of the uniqueness of the educational enter- prise, the academy must be free to direct, without out- side interference, those functions that may challenge but ultimately enrich the culture they sustain. **Because so many external agencies are wedded to the university system, universities must develop corporate structures that can respond to the demands of the public and protect against infuences that seek to manipulate truth for personal and political gain.** The American Association of University Professors’ Statement on Government of Colleges and Universities is a guiding document as to how postsecondary institutions are governed. In the sec- tion External Relations of the Institution, the AAUP assigns the governing board as the legal voice of the institution, but reminds board members that faculty can speak on their own behalf as citi- zens without fear of censure. This protection was codi ed under the 1940 Statement of Principles on Academic Freedom and Tenure. **Protecting knowledge production is clearly important, but having the freedom to teach truth is equally so. At the turn of the 20th century, teachers unions fought to ensure adequate worker conditions including fair wages**. They also fought to end administrators’ perverse efforts to control curriculum (The racial politics in The Adventures of Huckleberry Finn still gives administrators heartburn.) In the last decade, when so-called education reformers secured abilities to remove teacher protections in places like New Orleans and Washington, D.C., black women suffered more job losses than anyone else. **Protecting teachers is inextricably linked to protecting truth. It’s inevitable that the post-truth and Black Lives Matter eras collide. Black professors and teach- ers are black people too. The casualties from the attacks on black work show up in in who gets tenure and who does not. Professors, researchers and teachers of color are exposed by their criticism of institutional racism. The research on black and brown student success in college that’s been done by black re- searchers over time is essential to understanding why coeds stay in college or leave early. But black professors’ research is constantly debased as being “me-search” meaning the researcher is too close and biased to investigate the issues fairly.** Teachers of color are proven to be more cultur- ally relevant and consequently effective than white teachers. But as was mentioned, black women lost ground in cities that sought to “improve” the teaching corps. Black educators give a collective side-eye to the term “post-truth.” Blacks and other racial groups have known for quite some time how agenda setting is cloaked in ctitious narratives. The lm Birth of a Nation may have been the country’s greatest teacher in this regard. The same old story emerges in how certain education reformers paint pictures of corrupt, black school boards in urban districts that teach out-of-control students. Of course we need school takeover strategies and harsh discipline policies. The use of standardized test scores and the con- struct of the achievement gap can be tied to the eugenics movement and its efforts to maintain racial hierarchies. But they are essential tools to “reform” schools. **Power is truth’s biggest enemy. Not only must educational institutions defend the practice of ten- ure, we must vigorously protect (through tenure) educators who expose America’s biggest lie – the idea of white superiority.**

### Sullivan and White

#### Possible plan text or I meet to t

**Sullivan and White:** Thomas Sullivan and Lawrence White [Thomas Sullivan is president of the University of Vermont and former provost at the University of Minnesota and former dean of its law school. Lawrence White is vice president and general counsel at the University of Delaware.] “For Faculty Free Speech, the Tide Is Turning.” *The Chronicle of Higher Education.* September 2013. RP

**Faculty members sometimes say intemperate things. Their tendency to express themselves forcefully and, on occasion, provocatively is one of the defining characteristics of university culture.** "A professor," observed a recent report from the American Association of University Professors, "may well experiment with modes of presentation meant to shock." In keeping with well-understood principles of academic freedom, faculty members are typically given substantial latitude to teach courses within their expertise and domain. **But faculty members "speak," metaphorically, in many other ways—by engaging in research and creative activities and publishing the results, by serving on university committees, and by representing their universities when performing public service or service to their professional fields. To what extent does academic freedom protect faculty speech in those contexts?** For decades we had a workable answer in the form of a 1968 U.S. Supreme Court decision, Pickering v. Board of Education. The court enunciated a straightforward two-part test for balancing a faculty member's free-speech rights against a university's countervailing right to discipline the faculty member—as it would any other employee—for insubordination or disruption in the workplace. **Faculty members were deemed to have engaged in constitutionally protected free speech if, first, the speech addressed "matters of public interest in connection with the operation of the [institutions] in which they work"; and, second, their interest in speaking out outweighed** "the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." In Pickering, the justices struck the balance decisively in favor of a public-school teacher who had been fired for writing a letter to a local newspaper criticizing school officials. The court rejected the notion that "teachers may constitutionally be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work." The decision ushered in almost four decades of lower-court decisions largely supportive of faculty free-speech rights. But new uncertainty arose in the wake of the Supreme Court's 2006 decision in Garcetti v. Ceballos, a case that did not involve faculty members or universities directly but nevertheless contained an unsettling digression that left the effect of the law on employee speech uncertain as applied in the higher-education context. In Garcetti, a prosecutor had written an internal memorandum sharply critical of his supervisor's decision to proceed with a criminal prosecution. After the prosecutor was reassigned and denied promotion, he filed suit claiming that his supervisor had retaliated against him for having written the memorandum. The court, in a ruling that rejected the prosecutor's claim, held that "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline." The decision featured an unusual colloquy between Justice Anthony Kennedy, author of the majority opinion, and Justice David Souter, who dissented. Justice Souter expressed his hope that the decision in Garcetti "does not mean to imperil First Amendment protection of academic freedom in public colleges and universities, whose teachers necessarily speak and write 'pursuant to... official duties.'" In response, Justice Kennedy added a sentence for the majority: "We need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching." **Garcetti, in short, flagged but reserved judgment on the open question of whether faculty members at public colleges and universities enjoy protection against institutional retaliation for speaking out on matters of internal governance or public concern.** For seven years, lower courts have grappled inconsistently with the question reserved in Garcetti. In an early post-Garcetti case, decided in 2008, a federal trial court in California alarmed proponents of faculty free-speech rights by upholding a university's right to deny a faculty member a merit increase for criticizing the department chair at a faculty meeting. One year later, another federal court ruled that a faculty member had not spoken on a matter of public concern and was hence not entitled to First Amendment protection, when he published letters and made comments to a local newspaper reporter critical of university plans to merge two colleges. Those and other cases prompted the AAUP in 2009 to issue a report observing that "the lower federal courts have so far largely ignored the Garcetti majority's reservation, posing the danger that, as First Amendment rights for public employees are narrowed, so too may be the constitutional protection for academic freedom at public institutions, perhaps fatally." In the past two years, however, the tide appears to have turned. Two recent decisions by federal appellate courts explicitly hold that the Garcetti standard does not apply in faculty-free-speech cases. In 2011, in Adams v. Trustees of the University of North Carolina-Wilmington, a faculty member accused university officials of discriminating against him by denying his application for promotion after he expressed opposition to various university policies and positions in radio and television commentaries and a highly critical book. The court rejected the university's effort to dismiss the lawsuit on Garcetti grounds, holding that "Garcetti would not apply in the academic context of a public university as represented by the facts of this case." Just a few weeks ago, in Demers v. Austin, another federal appellate court reached the same conclusion in a carefully reasoned decision allowing a professor at Washington State University to proceed with a retaliation claim after he distributed a pamphlet and a book manuscript advocating an academic-reorganization plan opposed by university administrators. Once again the holding was unequivocal: "We conclude that Garcetti does not—indeed, consistent with the First Amendment, cannot—apply to teaching and academic writing that are performed 'pursuant to the official duties' of a teacher and professor. We hold that academic employee speech not covered by Garcetti is protected under the First Amendment, using the analysis established in Pickering." The trend is encouraging. As a legal principle and sound postulate of institutional governance, academic freedom should be deemed to protect the expression of faculty views even when they are deemed by some to be unhelpful or provocatively stated. This is especially compelling given the uniqueness of our universities as marketplaces of ideas where we seek to discover new knowledge and understanding and make it available to others. To the extent that Garcetti created any confusion about the academic-freedom rights of faculty members, nothing prohibits a university from embracing academic freedom of its own accord without waiting for the definitive judicial guidance that has so far been slow to come. **Some universities have taken matters into their own hands by importing Pickering free-speech standards into their institutional policies and collective-bargaining agreements**. (Note: Each of us worked on one of the exemplars described in this paragraph.) **At the University of Minnesota, a board-adopted policy on academic freedom and responsibility, enacted several years after Garcetti, accords faculty members "the freedom, without institutional discipline or restraint, to... speak or write on matters of public concern as well as on matters related to professional duties and the functioning of the University."** **At the University of Delaware, the same standard is incorporated into the faculty collective-bargaining agreement in the form of an academic-freedom article**—collegially renegotiated after Garcetti—declaring faculty members' "freedom to address the larger community with regard to any social, political, economic, or other interest" and to do so "without institutional discipline or restraint." The lower federal appellate courts since Garcetti have teed up squarely the question of faculty-free-speech rights. It is now time for the Supreme Court to address the issue with clarity and, following the lead of Adams and Demers, limit Garcetti's reach by rejecting any threat it may pose to the academic freedom of the professoriate.

### Wright

#### Academic freedom is freedom of speech.

**Wright:** Wright, George R “The Emergence of 1st Amendment Freedom.” *Nebraska Law Review.* 2007. RP

**To better understand the nature and value of academic freedom in various contexts, we must briefly link the idea of academic freedom to two of the standardly recognized basic purposes or values underlying the idea of special constitutional protection for speech. In particular, we should focus on the linkages between academic freedom and the free speech values of the pursuit of truth and of collective self-development. Both of these free speech values have already been met above as goals practically inseparable from the effective execution of central elements of the university mission. That the free speech values of the pursuit of truth and of collective self-development support academic freedom, even apart from the mission and policy statements cited above, should not be surprising. Some years ago, for example, Robert M. Hutchins declared broadly that "[t]he arguments for academic freedom are the same as those for freedom of speech.** "Such arguments are in a way actually somewhat misleading. Freedom of speech shields everyone against certain forms of government interference, but academic freedom makes policy sense in only a specialized set of circumstances. But there is certainly much to Hutchins' argument. **The pursuit of truth as a crucial value not only to the university but also to freedom of speech has been classically defended by John Stuart Mill. This defense does not rely on any assumption that an unpopular speaker is likely to be right and the regulating authority wrong. Academic freedom similarly does not stand or fall on anyone's view of the truth or falsity of a contested claim made by the academic figure in question.** The logic of academic freedom, given the university mission of furthering the truth, does require, however, that academics be generally selected in the first place in part based on their distinctive subject matter expertise. There would be little point in the Harvard motto of "Veritas" if the Harvard faculty were generally no more capable of approaching truth in any given field than the untrained.

### Glasser

#### Regardless of the content of the speech, granting authorities the power to define what is acceptable and what isn’t reproduces oppressive power strutures.

Glasser: Ira Glasser (Former executive director of the American Civil Liberties Union, now president of the board of directors of the Drug Policy Alliance), quoted in “HATE SPEECH IS FREE SPEECH” by Jonothan Haidt, , 6/12/16. RP

**How is ‘hate speech’ defined, and who decides which speech comes within the definition? Mostly,** it’s not us. In the 1990s in America, **black students favoured ‘hate speech’ bans because they thought it would ban racists from speaking on campuses. But the deciders were white. If the codes the black students wanted had been in force in the 1960s, their most frequent victim would have been Malcolm X**. In England, **Jewish students supported a ban on racist speech. Later, Zionist speakers were banned on the grounds that Zionism is a form of racism. Speech bans are like poison gas: seems like a good idea when you have your target in sight — but the wind shifts, and blows it back on us.**

### Delgado

#### Academia is comprised of white men who suppress the scholarship of minorities

**Delgado:** Delgado, Richard [Professor of Law, University of Pennsylvania] “The Imperial Scholar: Reflections on a Review of Civil Rights Literature.” *University of Pennsylvania Law Review.* March 1984. RP

**When I began teaching law in the mid-1970's, I was told by a number of well-meaning senior colleagues to "play things straight" in my scholarship-to establish a reputation as a scholar in some main- stream legal area and not get too caught up in civil rights or other "ethnic" subjects.** Being young, impressionable, and anxious to succeed, I took their advice to heart and, for the first six years of my career, produced a steady stream of articles, book reviews, and the like, impec-cably traditional in substance and form. The dangers my friends warned me about were averted; the benefits accrued. **Tenure securely in hand, I turned my attention to civil rights law and scholarship. Realizing I had a great deal of catching up to do, I asked my research assistant to compile a list of the twenty or so leading law re- view articles on civil rights**. I gave him the criteria you would expect: frequent citation by courts and commentators; publication in a major law review; theoretical rather than practical focus, and so on. **When he submitted the list, I noticed that each of the authors was white. Each was also male**. I checked his work myself, with the same result. Fur- ther, a review of the footnotes of these articles disclosed a second re- markable coincidence-the works cited were also written by authors who were themselves white and male. I was puzzled. **I knew that there are about one hundred Black, twenty-five Hispanic, and ten Native American law professors teaching at American law schools.' Many of them are writing in areas about which they care deeply: antidiscrimination law, the equality principle, and affirmative action. Much of that scholarship, however, seems to have been consigned to oblivion.2 Courts rarely cite it, and the legal scholars whose work really counts almost never do.** The important work is published in eight or ten law reviews and is written by a small group of professors, who teach in the major law schools." Most of this latter work, to be sure, seems strongly supportive of minority rights. It is all the more curious that these authors, the giants in the field, only infrequently cite a minority scholar. My assistant and I prepared an informal sociogram, a pictorial representation of who- cites-whom in the civil rights literature. It is fascinating. Paul Brest cites Laurence Tribe. Laurence Tribe cites Paul Brest and Owen Fiss. Owen Fiss cites Bruce Ackerman, who cites Paul Brest and Frank Michelman, who cites Owen Fiss and Laurence Tribe and Kenneth Karst . **It does not matter where one enters this universe; one comes to the same result:** an inner circle of about a dozen white, male writers **who comment on, take polite issue with, extol, criticize, and expand on each other's ideas**. It is something like an elaborate minuet. The failure to acknowledge minority scholarship extends even to nonlegal propositions and assertions of fact. W.E. DuBois, deceased Black historian, receives an occasional citation.' Aside from him, little else rates a mention. Higginbotham's monumental In the Matter of Color' might as well not exist. The same is true of the work of Ken- neth Clark,7 Black psychologist and past president of the American Psychological Association, and Alvin Poussaint,8 Harvard Medical School professor and authority on the psychological impact of race. **One searches in vain for references to the powerful book by physicians Grier and Cobbs, Black Rage,9 or to Frantz Fanon's The Wretched of the Earth, or even to writings of or about Martin Luther King, Jr.," Cesar Chavez, and Malcolm X**. When the inner circle writers need authority for a factual or social scientific proposition about race they generally cite reports of the United States Commission on Civil Rights14 or else each other.16 **He adds: I think I have discovered a second scholarly tradition. It consists of white scholars' systematic occupation of, and exclusion of minority scholars from, the central areas of civil rights scholarship. The main- stream writers tend to acknowledge only each other's work. It is even possible that, consciously or not, they resist entry by minority scholars into the field,22 perhaps counseling them, as I was counseled, to establish their reputations in other areas of law**. I believe that this "scholarly tradition" exists mainly in civil rights; nonwhite scholars in other fields of law seem to confront no such tradition.2

#### This exclusion is really bad

**Delgado:** Delgado, Richard [Professor of Law, University of Pennsylvania] “The Imperial Scholar: Reflections on a Review of Civil Rights Literature.” *University of Pennsylvania Law Review.* March 1984. RP

**Put in simple terms, what difference does it make if the scholarship about the rights of group A is written by members of group B?** Although Derrick Bell raised this question in a footnote, no one seems to have addressed it directly. There are, however, legal doctrines and case law that may suggest answers by way of analogy. Relevant doctrines include standing, real party in interest, and *jus tertii* doctrines which in general insist she is attempting, without good reason to assert the rights of, or redress the injuries to A. We also have rules pertaining to joinder of parties intervention, and representation in class suits, all of which serve to assure that the appropriate parties are before the court. On a more general level, our political and legal values contain an antipaternalistic principle that forbids B from asserting A's interest if A is a competent human being of adult years, capable of independently deciding upon and asserting that interest. **Abstracting from these principles, it is possible to compile an a priori list of reasons why we might look with concern on a situation in which the scholarship about group A is written by members of group B. First, members of group B may be ineffective advocates of the rights and interests of persons in group A. They may lack information; more important, perhaps, they may lack passion, or that passion may be misdirected**. B's scholarship may tend to be sentimental, diffusing passion in useless directions, or wasting time on unproductive breast-beating. Second, while the B's might advocate effectively, they might advocate the wrong things. Their agenda may differ from that of the A's;32 they may pull their punches with respect to remedies, especially where rem- edying A's situation entails uncomfortable consequences for B. **Despite the best of intentions, B's may have stereotypes embedded deep in their psyches that distort their thinking, causing them to balance interests in ways inimical to A's**. Finally, domination by members of group B may paralyze members of group A, causing the A's to forget how to flex their legal muscles for themselves. **A careful reading of the inner circle articles suggests that many of the above mentioned problems and pitfalls are not simply hypothetical, but do in fact occur. A number of the authors were unaware of basic facts about the situation in which minority persons live or ways in which they see the world. From the viewpoint of a minority member, the assertions and arguments made by nonminority authors were some- times so naive as to seem incomprehensible and hardly merit serious consideration**. For example, some writers took seriously the reductio ad absurdum argument about an infinitude of minorities (if Blacks and Hispanics, why not Belgians, Swedes, and Italians; what about an individual who is one-half Black, or three-quarters Hispanic?), or worried about whether a white citizen forced to associate with Blacks has his or her freedom of association violated as much as a Black compelled to attend segregated schools.34 One author reasoned that Carolene Products "footnote four" analysis is no longer fully applicable to American Blacks, because they have ceased to be an insular minority in need of heightened judicial protection.35 Another placed the burden on proponents of preferential admissions to show that no nonracial alternative exists, because today's minority may become tomorrow's majority and vice versa. In addition to factual ignorance or naivete, some of the writing suffered from a failure of empathy, an inability to share the values, desires, and perspectives of the population whose rights are under consideration. In his article, Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation,37 Derrick Bell pointed out that litigators in school desegregation cases have often seemed unaware of what their clients really wanted, or have pursued one remedy (e.g., integration) out of ideological commitment, even though the client wanted something different (e.g., better schools).38 A similar distancing of the scholar from the community he writes about was visible in the civil rights commentaries. The authors in the core group tended to be very concerned about procedure. Many of the articles were devoted, in various measures, to scholarly discussions of the standard of judicial review that should be applied in different types of civil rights suits.39 Others were concerned with the relationship be- tween federal and state authority in antidiscrimination law, or with the respective competence of a particular decisionmaker to recognize and redress racial discrimination. One could easily conclude that the question of who goes to court, what court they go to, and with what standard of review, are the burning issues of American race-relations law. Perhaps the emphasis on procedure and judicial role is harmless, just a peculiar kink lawyers get in law school; but, as I will argue later in this essay, there is more to it than that.4"

### Moore

#### Private universities pull faculty from public schools with money – this is part of a means of censorship that keeps faculty from doing research that disturbs neolib.

**Moore:** Moore, Leah [Contributor, The Daily Tar Heel] “Former UNC faculty, staff explain reasoning for taking offers at Duke.” *The Daily Tar Heel.* March 2017. RP

**In the past two years, three prominent staff members left UNC for Duke. In the 2015-16 school year, at least 11 faculty members left UNC and five offers from Duke University were made to faculty**, Executive Vice Provost Ron Strauss said. Jeremy Petranka, a professor of economics at Duke and a former professor at UNC, said he left for Duke because the offer Duke made him was too good to pass up. “**There was no part of me that was looking to leave UNC,” he said. “I had taught a class at Duke before and the school decided they wanted me to come over. They were able to put together a package that there was no reasonable way I could turn it down.” Petranka said private universities have an easier time pulling people over than public universities, especially as public budgets become tighter**. While he didn’t want to leave UNC, Petranka said the transition to Duke is easier than some due to the close proximity. **Omid Safi, who is now director of the Islamic Studies Center at Duke, left UNC in 2014. Safi said his departure was partially politically motivated. “We started to see a very chilling impact on the ability of professors and intellectuals and universities to do the kinds of things we ask our students to do all the time, which is to connect the dots and to scrutinize injustice, not at an individual level, but at a systematic and institutional level**,” Safi said. “I study the intersection of religion and politics and no one at UNC had ever objected to anything I had to say about human rights violations in Iran, in Saudi Arabia, in Turkey, in Israel, in any other country. I started to write about the North Carolina human rights violations and injustices, and the ways that the Republican state legislature was characterizing things like the Moral Monday movement as ‘outside agitators,’” he said. **Safi said UNC’s administration started censoring what he could and could not say about the political climate, which he said contributed to his decision to leave. I was told in no uncertain terms that while people in the UNC administration individually agreed with me, they were afraid,” Safi said. They were afraid that these kinds of comments would lead the GOP to cut UNC’s budget even more than they already had ... So ironically, although Duke is an elite, private, privileged school, I found it easier to do this kind of political truth-telling at Duke than I did at Carolina.”** Strauss said the trend of people leaving is not what it might at first appear — faculty retention is a market just like any other, and there are flows between universities. Though 11 faculty members left UNC last year, 94 were brought in, Strauss said. What happens with faculty retention and recruitment is that we tend to look at one side of the equation only, the departure side, and we forget about the incoming side,” Strauss said. At UNC, the balance is so dramatically tipped towards bringing in talent and not towards losing alent that it’s important for people to see that.”

### Sherry

#### Mandating good actions, such as freedom of expression, isn’t virtuous – it can’t be coerced – this causes backlash.

**Sherry:** Sherry, Suzanna [Professor of Law, University of Minnesota] “Speaking of Virtue: A Republican Approach to University Regulation of Hate Speech.” *Minnesota Law Review.* 1991. RP

**Compelling good manners, on the other hand, is simple. It would, for example, be easy for the government to compel me to vote in a mannerly way. The government might refuse to count my vote, or perhaps even punish me in some other way, unless I wait my turn, refrain from electioneering at the polling place, speak pleasantly to the election officials, and place my completed ballot in the appropriate basket.** Even if I do not agree that these are appropriate behaviors for voters, I can still fulfill the entire purpose of the law with mannerly behavior. The lawmakers care only about my behavior, and not about my beliefs. **Thus, legislative fiat can make the voting process mannerly, but not virtuous. So it is with behavior on campus. Universities that wish to maintain a certain civility on campus may be able to enforce that type of behavior coercively. Universities that wish to cre- ate or maintain certain values in their students, however, can- not accomplish their aim merely by coercing virtuous behavior. Indeed, as with voting, an attempt to compel virtuous behavior may backfire, creating nothing but resentment and a refusal to consider the underlying normative questions. In particular, censoring expression in an attempt to create virtue is likely to make the censored speech more, rather than less, appealing.**

#### Speech codes turn on issues such as race or gender, which isn’t virtuous to base policies on.

**Sherry:** Sherry, Suzanna [Professor of Law, University of Minnesota] “Speaking of Virtue: A Republican Approach to University Regulation of Hate Speech.” *Minnesota Law Review.* 1991. RP

**The addition of hate speech regulations to many student codes of conduct which already prohibit harassment without defining it in terms of victimized groups further illustrates that these universities are attempting to coerce particular values rather than merely to create a civil environment. One university currently prohibits "[p]hysically abusing, harassing, or intentionally inflicting severe emotional distress upon a member of the university community." Nevertheless, this same university is considering a proposed additional policy condemning hate speech, which is defined as "the use of racial epithets by a dominant group or member of a dominant group to oppress, harass, or fluster a member of a subordinate group."' In contrast, a few universities have already recognized that civility is not dependent on race, gender or other similar characteristics**. In response to a request for regulations "which prohibit speech that libels, stereotypes, etc. women and members of minority groups," one university counsel provided, without further ado, its code of student conduct: the relevant portion of that code simply prohibits "[h]arassing, annoying or alarming another person... [or] addressing abusive language to any person."39 Another university apparently used the typical list of protected characteristics only as an example: "An individual who harasses another because of his or her race, sex, sexual orientation, ethnic background, religion, expression of opinion, or any other factor irrelevant to participation in the free exchange of ideas" is subject to discipline.

#### Inculcation of virtues isn’t the goal of colleges, but rather of elementary school – hearing perspectives is more important

**Sherry:** Sherry, Suzanna [Professor of Law, University of Minnesota] “Speaking of Virtue: A Republican Approach to University Regulation of Hate Speech.” *Minnesota Law Review.* 1991. RP

I see two major problems with such university attempts to coerce virtue. Both deal mainly with the differences between primary and secondary education on the one hand, and univer- sity education on the other. **First, unlike primary and secon- dary schools, producing virtuous, responsible citizens is not a major purpose of the university, and indeed conflicts with more important purposes.** Second, even if improving the virtue of its students were a legitimate university purpose, coercion at the university level cannot accomplish this goal. **Teaching virtue is at least arguably one of the purposes of primary and secondary education**. A republican polity in par- ticular would recognize the importance of instilling in children the values and virtues necessary for life in that democratic soci- ety. Historically, public education in the United States was in fact designed to transmit shared moral values, including civic virtue.4 Many modern scholars - especially neo-republicans of one sort or another - also stress the necessity of allowing schools to transmit values rather than remaining ideologically neutral.43 This indoctrination aspect of primary and secondary education is, of course, still controversial. Some scholars would restrict or prohibit explicit value transmission at any educa- tional level," and some suggest that virtue is best taught by ex- ample rather than by force.45 Finally even some who concede the importance of value inculcation would restrict it to the classroom, and not allow coercive action to infect more volun- tary spheres. **Even assuming, however, that value inculcation is a legiti- mate function of primary and secondary schools, that does not necessarily mean that it is legitimate at the university level.** Although one purpose of primary and secondary education is the transmission of societal values, the main purpose of a uni- versity is the search for knowledge. **University students and faculty participate together in a disinterested search for truth.41 For that reason, any coercive curtailment of unpopular view- points in the name of virtue is inconsistent with the very foun- dation of a university education**. One scholar has insightfully captured the essence of this inconsistency: A school cannot ban the Students for a Democratic Society from cam- pus because it disagrees with or fears its social goals, but it can ban fraternities if it views them as trivial and anti-intellectual. This distinction is valuable, because it permits a college to make choices that promote educational values while deterring sectarian exclusivity. **Moreover, even if value inculcation is one legitimate function of a university, it cannot be permitted in this context because it conflicts with the more important function of critical analysis**.49

### Shaw

#### Restrictions on speech are rooted in a securitized worldview that sees students as in need of protection from outsiders – this breeds paternalism and destroys civil liberties

**Shaw:** Shaw, Jazz [Contributor, Hot Air] “Using ‘security’ as a reason to shut down free speech on campus.” *Hot Air.* September 2016. RP

Here’s a short but interesting essay from Catherine Rampell at the Washington Post. She takes on a subject near and dear to my heart, specifically the lack of ideological diversity on our nation’s college campuses and the suppression of free speech. **In it, Rampell highlights instances where colleges have cancelled or completely rejected appearances by invited conservative speakers. She focuses on a couple of them, including Ben Shapiro’s scheduled lectures at two schools. In both cases, “security concerns” were cited as the reason** Ben was told not to bother showing up. **That’s a very convenient excuse for a couple of reasons.** If you simply say that your special snowflakes can’t handle hearing Ben’s views so you’re locking the doors, then the dishonest nature of liberal run institutions is too clearly exposed. It’s much better to pretend that you’d love to have him come give his speech, but you can’t be held responsible if your peaceful protesting students tear him limb from limb. **Around the country, colleges have found a new excuse for shutting down free speech: safety. Just as “national security” has periodically served as a pretext for robbing Americans of civil liberties, so too has “campus security” newly become a convenient rationale for discarding commitments to free speech. Unwilling to either defend controversial speech or cop to censoring it, college administrators are instead increasingly invoking public “safety” when they cancel events**. Ben Shapiro, a young conservative firebrand who has criticized Black Lives Matter, has recently been disinvited from two college campuses due to “security” concerns. In February, his scheduled talk at California State University at Los Angeles was canceled — or rather, indefinitely delayed — so that administrators could “arrange for him to appear as part of a group of speakers with differing viewpoints on diversity.” Isn’t that nice and thoughtful of them? The school is so worried about Ben’s safety and security that they cancelled (I’m sorry... indefinitely postponed) his appearance. **But shouldn’t this raise a larger question for school administrators to tackle? Let’s start with the assumption that they truly believe disagreeable speech is “dangerous” for students to encounter without safe spaces and trigger warnings galore**. We wouldn’t want anyone to be suddenly surprised. Fair enough. That indicates that you really want to protect people and are taking steps to tamp down any potential threats. Good for you. **But if things are so bad on your campus that you believe the students will physically try to attack a guest speaker, isn’t that a considerably larger danger? What’s wrong with your students which makes them so dangerously violent that they can’t be trusted to attend a lecture or even peacefully protest it?** Will you completely eliminate anything which students don’t approve of out of fear for your own safety? **At that point we’re no longer talking about the sanctity of free speech or protecting your charges from differing opinions. You’ve given in to the criminal class and are being terrorized by your own student body**. You don’t need to be calling a meeting of the student council. You need to be calling the cops because that’s not a protest... it’s a violent riot, and you need to be weeding the dangerous criminals out of your student body, not the conservatives.

### Mitchell

#### Restrictions on speech function as a tool of convenience for powerful groups – they can restrict it whenever it comes close enough to infringing on their control

**Mitchell**: Mitchell, Don [Professor of Geography, Syracuse] “THE LIBERALIZATION OF FREE SPEECH: OR, HOW PROTEST IN PUBLIC SPACE IS SILENCED.” *Stanford Agora.* Volume 4. 2003. RP

As importantly, and as I have explored in detail in other work, it is problematic because it puts into place - by implication in Holmes's own words, but later made explicit in a whole series of cases - a distinction between speech and conduct. Even "First Amendment absolutists," like Justice Hugo Black saw nothing wrong with the regulation of peaceful rallies if their conduct interfered with some other legitimate interest. This conduct could be widely interpreted. For most of the first half of the twentieth century, conduct that could be prohibited included the mere act of picketing. Courts upheld numerous injunctions against picketing on the basis that the conduct it entailed was necessarily either violent or harassing. Indeed, in one famous case in the 1920s, Chief Justice William Taft wrote of picketing, that its very "persistence, importunity, following and dogging" offended public morals and created a dangerous nuisance.40 The problem with picketing, Taft thought, was twofold. First, through its combination of action and speech, it tried to convince people not to enter some establishment; second, it intended to draw a crowd. To the degree it did both - that is, to the degree that is successfully communicated its message - it interrupted business and, in Taft's eyes, undermined the business's property rights, and therefore could be legitimately enjoined. **Speech was worth protecting to the degree that is was not effective. Not until the 1940s did the Court begin to recognize that there might be an important speech right worth protecting in addition to the unprotected conduc**t. There is an additional result of Holmes's declaration about the value of speech in Abrams. Whereas the First Amendment is silent on why speech is to be protected from Congressional interference, Holmes makes it clear that the protection of speech serves a particular purpose: improving the state. Indeed, he quickly admits that speech likely to harm the state can be outlawed. And neither he nor the Court ever moved away from the "clear and present danger" test of Schenck. Speech, Holmes argues, is a good insofar as it helps promote and protect the "truth" of the state. **There is a large amount of room allowed here for criticism of the state, but it can still be quieted by anything that can reasonably construed as a "legitimate state interest"** (like protecting the property rights of a company subject to a strike).49 **According to the Gitlow Court (if not Holmes, who did not see in Gitlow's pamphlet enough of a clear and present danger), any speech that "endanger[s] the foundations of organized government and threaten[s] its overthrow by unlawful means" can be banned. Note here that speech does not have to advocate the overthrow of government; rather, it can be banned if through its persuasiveness others might seek to overthrow the government**. On such grounds all manner of manifestos, and many types of street speaking, may be banned. And more broadly, as evidenced in picketing cases like American Steel Foundries, a similar prohibition may be placed on speech that, again through its persuasiveness (e.g. as to the unjustness of some practice or event) rather than through direct exhortation, may incite people to violence.

#### Limits on speech, such as zoning, are used to construct threats by the state – protests and rebellion are seen as “dangerous” and must be suppressed

**Mitchell**: Mitchell, Don [Professor of Geography, Syracuse] “THE LIBERALIZATION OF FREE SPEECH: OR, HOW PROTEST IN PUBLIC SPACE IS SILENCED.” *Stanford Agora.* Volume 4. 2003. RP

The third case study therefore returns to the paradigm of public forums, the streets, where protesters now find the city as a whole more and more segregated into a series of protest and no protest zones that is, they find a city looking more and more like the forlorn parking lots of Denver International Airport. **In the streets, public forum doctrine encourages police and other city, state, and national officials to construct designated "protest zones" and "no protest zones"** outside major international meetings, events like the political conventions, and, perhaps most uncomfortably for progressives, outside abortion clinics. What is at work, I will argue, is a form of public space zoning, sometimes temporary, sometimes permanent.141 As with the City of Denver and its decision to relegate picketers to a distant parking lot, the zoning of public space into areas that allow or disallow protest derives from a desire to "balance" the rights of the protesters with the needs of the event or place being protested. Perhaps the most intriguing place to examine this dynamic of protest zoning is in Seattle at the height of the demonstrations against the World Trade Organization in November and December, 1999. The creation of a no-protest zone during these demonstrations was less an intentional policy of the city, that an outcome of the city’s failure to prevent protest in other ways. As with many cities, Seattle has long has a permitting process for parades and protests. During the WTO meeting, "official" protests had been permitted for a number of areas around town. Labor unions, for example, rallied near the old King Dome; other protesters gathered at the Space Needle. But, on November 30, 1999, some 20,000 un-permitted protesters gathered downtown, many of whom were deployed in a well-organized plan to block key intersections and, it was hoped, to disrupt the ability of the WTO delegates to get to the meeting site. With a small number of protesters smashing windows and engaging in other acts of violence against property, and with the labor unionists beginning their march to join the protesters downtown, Mayor Paul Schell declared a state of emergency, stopped the labor parade before it reached downtown, and asked the Governor to mobilize the National Guard to clear the streets. The next day, Mayor Schell issued an order that barred any person from "enter[ing] or remain[ing] in a public place" within a 50 block zone downtown. Exceptions were granted for WTO delegates, business owners and employees, residents of the zone, emergency personnel, and, interestingly, shoppers.142 Protest was quite simply banned from downtown. While order was restored to the streets quickly after the order was issued, it was not rescinded until after the WTO meeting was over.143 The city staked the legitimacy of its emergency order on the precedent established in the case Madsen v. Women’s Health Center.144 The Madsen case, and one that followed it (Hill v. Colorado145) established the legitimacy of creating "bubbles" around abortion clinics within which protest, picketing, leafleting, and "sidewalk counseling" was either forbidden altogether or severely restricted. The goal, of course, was to protect the rights and safety of women entering the clinics, as well as those of the clinic’s employees. **Following Madsen, the City of Seattle argued not only that creating a fifty block no-protest zone around the WTO meeting was legitimate as an emergency measure, but also that it was legitimate on its face: it was simply a reasonable time, place, and manner restriction on speech and assembly that was tailored to advance a compelling state interest**: protecting the delegates to the WTO from the disruptive protests erupting around them.146 The nature of this compelling state interest is unclear. While women have a constitutionally protected, if increasingly fragile, right to abortion that the Madsen decision seeks to balance against the rights of protesters,147 it is impossible to guess what right WTO ministers have to traverse the streets and use the public buildings of Seattle without having to encounter protesters.148 And so, in fact, in its arguments in support of the continuance of the order, the City argued instead that the order was a critical means not only for restoring order, but for maintaining it. **The National Guard and other police forces, armed with the emergency order and their batons, successfully cleared the streets and kept protesters out of downtown on December 1.** Here is how one news article reported the scene: A crackdown that put National Guard troops, state troopers, and police officers in head-to-toe black on every corner of downtown yesterday all but ended impromptu protests against the World Trade Organization while allowing the group’s meetings and permitted processions to go on as scheduled. Standing shoulder to shoulder or marching in unison, Seattle police officers wearing gas masks and carrying batons charged the demonstrators and pushed them out of what was dubbed the "no protest zone" near the convention center where President Clinton addressed the WTO delegates. The interesting word in that passage, of course, is "impromptu." Seattle officials averred over and over that they had no interest in stopping parades and protests that had been sanctioned through its permitting process. The no protest zone was a response to those some violent, the vast majority not who sought to protest without the city’s permission: who sought, that is, to exercise their right to assembly without clearing it with the government first. In the end, a federal judge upheld the city’s position, seeing no illegitimate abridgement of protesters’ rights in the City’s establishment of a no protest zone. **The judge stated, plainly enough, that "free speech must sometimes bend to public safety."150 In this case it had to bend for 50 blocks, and right out of downtown even though in Madsen, the court had found a 36 foot exclusion zone to be reasonable but both a 300 foot zone in which approaching patrons and workers of clinics, and a 300 foot no-protest zone around residences of clinic workers to be too great a burden on free speech, ordering a much smaller no-protest bubble to be drawn**.151 Given this sort of spatial specificity in the Supreme Court’s decision, it seems unlikely that such a large protest exclusion zone could withstand scrutiny.

|  |
| --- |
|  |

#### These limits on speech are intentionally created by the state to stifle criticism and make movements impossible

**Mitchell**: Mitchell, Don [Professor of Geography, Syracuse] “THE LIBERALIZATION OF FREE SPEECH: OR, HOW PROTEST IN PUBLIC SPACE IS SILENCED.” *Stanford Agora.* Volume 4. 2003. RP

But there is another issue at work too. The judge in Seattle supported the City’s contention that sanctioned protest was acceptable. **The no-protest zone was necessary because of impromptu protests. But, of course, the very effectiveness of the Seattle protests was their (apparent) spontaneity**.152 That is what caught the media’s and the public’s imagination; and that is what allowed for the massive upsurge of political debate, in the U.S. and around the world, that followed. Perhaps, tactically, Seattle’s "mistake" was to not establish designated protest and no-protest zones in advance of the meetings. Such a move had been effective in the 1996 Democratic and Republican Conventions (and in earlier ones too). And in subsequent years and events it has become standard practice, as with the 2000 National Conventions, the annual meetings of the World Bank and International Monetary Fund in Washington, and the World Economic Forum meeting in New York in February 2002, where protesters are kept out of certain areas by fences, barricades and a heavy police presence.153 **In the case of the 2000 Democratic National Convention in Los Angeles, it was the protesters who were fenced off, with the City establishing an official "protest zone" in a fenced parking lot a considerable distance from the convention site. The rationale, of course, was "security," a rationale backed by appeals to the authority of the Secret Service.** The ACLU, among others, sued the city, eventually winning a decision that invalidated the city’s plans. The city was forced to establish a protest zone closer to the convention center, with the judge chiding the City of Los Angeles for failing to consider the First Amendment when it established the rules for protest and security around the event. "**You can’t shut down the 1st Amendment about what might happen," the judge said. "You can always theorize some awful scenario**." This victory should not be considered very large. Its effect, and the effect of other cases like it, has largely reduced the ACLU and other advocates of speech rights to arguing the fine points of geography, pouring over maps to determine just where protest may occur. **Protesters are put entirely on the defensive, always seeking to justify why their voices should be heard and their actions seen, always having to make a claim that it is not unreasonable to assert that protest should be allowed in a place where those being protested against can actually hear it, and always having to "bend" their tactics and their rights to fit a legal regime that in every case sees protest subordinate to "the general order" (which, of course, really means the "established order").** In this regard, consider the April 2000 protests in Washington, D.C. against the IMF and the World Bank. The police opened proceedings by shutting down on a pretext (fire code violations) a warehouse that protest groups had rented to serve as a staging area.156 The police then undertook wholesale arrests of protesters for parading without a permit - only licensed speech was to be permitted.157 And, of course, the whole area around the World Bank and IMF offices and meeting spaces was simply declared off-limits to protest. The City even went so far as to expand the no-protest zone at the last minute when it was feared that it was not large enough.158 The no protest zone grew to more than 50 blocks, all set off with metal barricades. The whole purpose, as Police Chief Charles Ramsey made abundantly clear, was to assure that "Seattle" that is uncontrolled protest did not occur in Washington. **The effect, of course, was to ensure that those who were the target of the protests never had to see or hear them, except perhaps on TV. And the pre-emptive arrests and closing down of gathering places assured that the press would spend less time conveying the message of the protest and more time describing and debating the tactics of the protesters and the police.**

#### These limitations on speech allow leaders to create states of emergency that result in surveillance and the crushing of all dissent

**Mitchell**: Mitchell, Don [Professor of Geography, Syracuse] “THE LIBERALIZATION OF FREE SPEECH: OR, HOW PROTEST IN PUBLIC SPACE IS SILENCED.” *Stanford Agora.* Volume 4. 2003. RP

As the preceding argument has indicated, the liberalization of free speech has not always been progressive. And it has not been progressive in both senses of the term. It has not marched steadily forward, uninterrupted, towards the shining light of freedom, to become ever more liberal, ever more just. Rather, to the degree it has been liberalized, this has occurred in fits and starts, with frequent steps backwards or to the side rather than forward. Like any social history, that is, the history of free speech is not a linear one of ever-expanding enlightenment; like any social history it is a history of on- going struggle. Nor has it been progressive in the sense of necessarily more just, as a close focus on the geography of speech makes clear. Geographical analysis has shown that what sometimes appears as a progressive reinforcement of a right to speech and assembly is really (or is also) in fact a means towards its suppression.169 **Nonetheless, whatever rights have been won, have been won through struggle and often not by following the law, but by breaking it. Civil disobedience, by labor activists and other picketers, by civil rights marchers, by anti-war protesters, and by Free Speech activists (as with the Free Speech Movement in Berkeley in the sixties), has forced often illiberal theories of speech and assembly to be reconsidered.** **But against these struggles has to be set a history of governmental recidivism: the Palmer raids and Red Scare of 1919-1920, the Smith Act of 1940, the McCarthy era, and the antics of COINTELPRO in the 1960s and 1970s, are just a few of the more well-known moments of repression, often cloaked in law and justified as urgent "legitimate state interests" at a time when serious challenges were being made to the "established order" or when other exigent factors induced panic within the government and the public at large**. The history of speech and assembly, that is, can be told as an on-going struggle against recurring illiberalism. We are, most likely, now reentering an illiberal phase, and if I am right that civil disobedience has always been necessary to winning and securing rights to assembly and speech, there is a great deal to be deeply concerned about. **For the closing off of space to protest has made civil disobedience all the more necessary right at the moment when new laws make civil disobedience not just illegal, but potentially terroristic. The witch’s brew of Supreme Court spatial regulation of speech and assembly and new anti-terrorism laws portends deep trouble for those of us who think we have a duty as well as a right to transform our government when we think it is in the wrong, a duty and a right for which street protest is sometimes the only resource**. Within six weeks of the terrorist attacks of September 11, 2001, Congress had passed, and the President signed into law, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act). Among its many provisions, the Act defines as domestic terrorism, and therefore covered under the Act, "acts dangerous to human life that are in violation of the criminal laws," if they "appear to be intended ... to influence the policy of a government by intimidation or coercion" and if they "occur primarily within the territorial jurisdiction of the United States." As Nancy Chang argues: Acts of civil disobedience that take place in the United States necessarily meet three of the five elements in the definition of domestic terrorism: they constitute a "violation of the criminal laws," they are "intended ... to influence the policy of a government," and they "occur primarily within the territorial jurisdiction of the United States." **Many acts of civil disobedience, including the blocking of streets and points of egress by nonviolent means during a demonstration or sit- in, could be construed as "acts dangerous to human life" that appear to be intended to influence the policy of a government "by intimidation or coercion**," which case they would meet the crimes remaining elements.... **As a result, protest activities that previously would most likely have ended with a charge of disorderly conduct under a local ordinance can now lead to federal prosecution and conviction for terrorism**. As the space for protest has become more and more tightly zoned, the likelihood that laws will be broken in the course of a demonstration a demonstration seeking to "influence a policy of government" increases. And, of course, the very reason for engaging in a demonstration is to coerce, even if it is not to directly "intimidate." One should not be sanguine about the "or" placed between intimidate and coerce. It means just what it says: coercion or intimidation will be enough for prosecution.173 Now even civil disobedience can be construed as an act of terrorism. The intersection of the new repressive state apparatus being constructed in the wake of September 11 with nearly a century of speech and assembly "liberalization" portends a frightening new era in the history of speech and assembly in America. We may soon come to long for those days when protest in public space was only silenced through the strategic geography of the public forum doctrine.

### Tsesis

#### Hate speech on campus isnt protected speech -- court precedent proves. [this card isnt very good bc its about fighting words ]

**Tsesis:** Tsesis, Alexander [Professor, Loyola University School of Law] “Burning Crosses on Campus: University Hate Speech Codes.” December 2010. RP

**Several mid-twentieth century cases identified some of the harmful expressions that are unprotected by the First Amendment. In a case decided during World War II, Chaplinsky v. New Hampshire,' the Court found that a Jehovah's Witness who verbally attacked a police marshal could be prosecuted pursuant to an ordinance prohibiting public incitement**.72 The Court has long contrasted constitutional expression and violent bombast because "[t]here are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem." The social interest in "order and morality" outweighs any cathartic benefit a speaker may derive. **Just as fighting words are unprotected by the First Amendment because they are unconnected to traditional speech values, neither should hate speech receive First Amendment protection when it aims to incite people to commit harmful acts against identifiable groups**. Not all hate speech seeks to incite others to act; sometimes it is simply a true threat that might constitute an assault.76 **But where hate speech threatens a protected group and seeks to incite others to act against an identifiable target, a university speech code can punish it. The free exchange of ideas is not furthered through exhortations to attack, harm, or discriminate against others**. A judge determining whether a verbal attack is dangerous enough to constitute an offense must consider the context in which it was uttered. **Even the content-based regulation of speech that is drafted with enough generality not to discriminate against particular viewpoints can be a permissible use of government power** when "the evil to be restricted so overwhelmingly outweighs the expressive interests." **Fighting words are analogous to hate speech insofar as both are meant to provoke violent reaction rather than to elicit discussion**. In circumstances where fighting words are meant to intimidate others by reference to historically intimidating symbols, like swastikas or burning crosses, they enter the realm of hate speech. Neither form of expression seeks to promote debate. Rather than being discursive, hate messages are meant to be threatening or damaging to targeted individuals.

#### Speech targeting specific groups isn’t protected

**Tsesis:** Tsesis, Alexander [Professor, Loyola University School of Law] “Burning Crosses on Campus: University Hate Speech Codes.” December 2010. RP

**In Beauharnais, the Court upheld the constitutionality of a group libel statute that rendered it actionable to "portray depravity, criminality. .. or lack of virtue of a class of citizens, of any race, color, creed, or religion" and to expose those citizens to "contempt, derision, or obloquy."' The majority found that, given Illinois's history of racial friction, its legislature could enact legislation to punish the dissemination of demeaning messages**, such as those opposed to neighborhood integration, because those messages threatened "the peace and well-being of the State." The opinion conceived of government playing a role in establishing a standard of decency designed to prevent intergroup friction.

#### No link uniqueness for iLaw – universities are compliant with bans on fighting words – make them read evidence that *hate speech is key.*

**Tsesis:** Tsesis, Alexander [Professor, Loyola University School of Law] “Burning Crosses on Campus: University Hate Speech Codes.” December 2010. RP

In balancing the interests of intimidated individuals and persons wishing to express prejudiced opinions, the United States' free speech tradition provides public university officials with less latitude to punish group hatred than their administrative counterparts in countries like Canada, Germany, and England. **American jurisprudence is nevertheless in accord with international findings that virulent forms of hateful expressions pose a threat to public safety. International norms and foreign laws on this subject suggest that hate speech is harmful to individuals as well as groups. The risk of leaving hate speech unchecked on campuses is that the targets of violent communications remain vulnerable to more harassment**. Because targeted groups and individuals are often uncertain of their safety, they tend to be wary of pursuing the full breadth of available educational opportunities, trying to avoid locations and activities that might expose them to calumny or danger.

### Gay

#### Campus protests access every neg impact – they’re key for movements against war aboard, human rights violations, and American democracy.

**Gay:** Gay, Roxanne [Contributor, New Republic] “Student Activism Is Serious Business.” *New Republic.* November 2015. RP

Student activism is not new. Sometimes it is misguided, sometimes it’s dismissed, but it is always earnest. **In 1960, young black students who had put up with enough and wanted their concerns about racial equality and civil rights to be heard formed the Student Non-Violent Coordinating Committee, or** [**SNCC**](http://www.history.com/topics/black-history/sncc)**. They eventually became the more radical arm of the civil rights movement—leading direct action protests, coordinating the** [**Freedom Rides**](http://www.history.com/topics/black-history/freedom-rides)**, and leading voter registration drives.** They were passionate. They were provocative. They put their lives on the line and we remember them today as a force in the movement. **SNCC showed that young people are an integral part of a participatory democracy and that they deserved to have a seat at the civil rights table. We have new cause to think about student activism, race, and the continuation of the civil rights movement because of concurrent and related student protests at both the University of Missouri and at Yale University**. Of late, there has been a lot of talk about college students and their curious ways, about how they are intensely politically correct, overly sensitive, and unduly coddled. Some have suggested that students are frivolous activists, that they no longer have senses of humor, and that liberalism has run amok on college campuses, ruining them in the process. This is a reductive and rather lazy understanding of student activism. In the protests at Mizzou and Yale and elsewhere, students have made it clear that the status quo is unbearable. **Whether we agree with these student protesters or not, we should be listening: They are articulating a vision for a better future, one that cannot be reached with complacency.** Late Saturday night, word spread that Mizzou’s black football players were planning to strike and refusing to participate in team activities, including games. They were the latest to join graduate student Jonathan Butler—who had been on a hunger strike since the prior Monday—and the activist group Concerned Student 1950, in order to force the ouster of University of Missouri system president Timothy Wolfe. The protests ignited because of Wolfe’s inaction and perceived indifference in the face of several racial incidents on the Mizzou campus, including a swastika drawn on a wall in human feces. The students circulated a list of [demands](http://www.alternet.org/news-amp-politics/read-university-missouri-protesters-list-impressive-demands-led-presidents): They wanted a handwritten apology from Wolfe, his resignation, the development of a racial awareness curriculum, and the creation of a strategic plan for the retention of marginalized students. Things moved quickly after the players joined the cause. More graduate students began protesting. Head football coach Gary Pinkel offered his support of the protest with a [post on Twitter](https://twitter.com/GaryPinkel/status/663410502370856960). On Monday morning, faculty said they were going to participate in a two-day walkout in solidarity with the protesters. Later that day, both Wolfe and R. Bowen Loftin, the chancellor of Mizzou’s flagship campus in Columbia, resigned. Administrators announced a series of [initiatives](http://www.umsystem.edu/ums/news/leadership_news/news_110915) designed to promote a stronger racial climate on campus. In truth, the tipping point was the black football players denying the university their black labor. They created a financial imperative for the university to enact change: If the Tigers didn’t play their next scheduled game against Brigham Young on November 14, Mizzou would have to pay a $1 million cancellation fee. SNCC showed that young people are an integral part of a participatory democracy and that they deserved to have a seat at the civil rights table. At Yale, [the Intercultural Affairs Committee,](http://yalecollege.yale.edu/intercultural-affairs-council-iac) composed of diversity administrators from across the university, sent students [an email](https://www.thefire.org/email-from-intercultural-affairs/) before Halloween, imploring them to be more thoughtful about their costume choices—to avoid offensive cultural appropriation or misrepresentation. “Halloween is also unfortunately a time when the normal thoughtfulness and sensitivity of most Yale students can sometimes be forgotten and some poor decisions can be made including wearing feathered headdresses, turbans, wearing ‘war paint’ or modifying skin tone or wearing blackface or redface,” the letter read, in part. The counsel in this letter may have felt paternalistic, but given how many college students have historically chosen to paint themselves in blackface and otherwise tread upon cultures and common sense, the email was certainly well-intended and not out of the ordinary. Some students complained nonetheless. Lecturer Erika Christakis, associate master of Yale’s Silliman College (an administrative role essentially equivalent to a dean of student life), wrote an email responding to the students troubled by the IAC’s letter. With willfully detached intellectual curiosity, she argued that it’s fine for students to be students and to make mistakes—for children, in a word, to be children. I wonder and I am not trying to be provocative: Is there no room anymore for a child or young person to be a little bit obnoxious … a little bit inappropriate or provocative, or yes offensive? American universities were once a safe space not only for maturation but also for a certain regressive, or even transgressive, experience; increasingly, it seems, they have become places of censure and prohibition. It is seductive in theory: Why not let people indulge their basest whims? Why not encourage unchecked curiosity? Christakis did, however, intentionally misread the letter the Intercultural Affairs Committee sent; the committee did not prohibit anything, nor did it suggest that it wanted to. The organization simply offered suggestions to create for Yale students a better world than the one we live in. Christakis, on the other hand, suggests we take our arguments out of their real-world context—eliding real people in the process—and instead move them into the realm of the theoretical, where no one can feel hurt. In the real world, though, we have to question the cost of the transgression Christakis argues for so eloquently, and who will pay the price. For some, these matters are engaging intellectual exercises. For others, they are matters of dignity, emotional wellbeing, and safety. Hundreds of Yale students have not taken kindly to Christakis’s suggestions, protesting her words and calling for the resignations of both her and her husband Nicholas, Silliman College’s master—the principal faculty member [“responsible for the physical well being and safety”](http://yalecollege.yale.edu/campus-life/residential-colleges) of students in his residence hall. Neither faculty member should resign or even apologize, but the students are well within their rights to protest the troubling spirit of Christakis’s email. In [The Atlantic](http://www.theatlantic.com/politics/archive/2015/11/the-new-intolerance-of-student-activism-at-yale/414810/), Conor Friedersdorf took offense to some of the people involved in the protest, labeling them intolerant. “They’re behaving more like Reddit parodies of ‘social-justice warriors’ than coherent activists, and I suspect they will look back on their behavior with chagrin,” he wrote, espousing the curious notion that protest should be a polite and demure endeavor that pleases everyone. I attended Yale from 1992 to 1994. While I was there, I understood that, as a black woman, I was regarded as a usurper on hallowed Ivy grounds. Either I was a scholarship student or a New Haven local—no one could believe that I was there, like the others, simply to learn. It was not uncommon to be the target of racial slurs, to be the subject of whispered discussions about affirmative action, and to tolerate microaggressions on a daily basis. Campus police made a sport of asking me and other black students, to show our student identification cards. My experience was in no way unique. The currents protests are symbolic of a far more complex problem: a troubled racial climate on Yale’s campus that has persisted for many years. In truth, most predominantly white campuses across the country are similarly plagued. I have spent most of my adult life on college campuses in one role or another, as both student and instructor; regardless of campus, the racial climates were always tense, at best. I am not surprised by what is happening at Yale. I am not surprised by the Mizzou protesters, or by the fervor of their commitment. We cannot ignore what is truly being said by both groups of protesters: That not all students experience Yale equally, and not all students experience Mizzou equally. These conversations were happening well before these protests, and they will continue to happen until students are guaranteed equality of experience. They are still being forced, however, to first prove that it is worth opening a conversation about either. While I was at Yale, I understood that, as a black woman, I was regarded as a usurper on hallowed Ivy grounds. At Mizzou, the banal and predictable backlash has begun. The students have been painted as [cowardly babies](http://mediamatters.org/blog/2015/11/09/redstate-contributor-calls-mizzou-student-prote/206714), [bigots](https://www.rawstory.com/2015/11/conservatives-having-white-hot-emotional-meltdown-over-resignation-of-university-of-missouris-president/), or [outright liar](http://www.nationalreview.com/corner/426879/hey-mizzou-wheres-poop-andrew-c-mccarthy)s by the conservative media. They are ingrates, irresponsible, and, [in the case of the football players](http://www.nytimes.com/2015/11/09/us/missouri-football-players-boycott-in-protest-of-university-president.html?_r=0), men unwilling to meet their obligations. The students’ concerns have been roundly diminished or dismissed. It seems that when it comes to racism, people of color are expected to endure without complaint. We are expected to be grateful for opportunities, like a college education, while ignoring racial aggressions both great and small. We are supposed to be noble in the face of staggering humiliations. As a student, I was expected to show my ID every single time it was demanded of me and I was expected to pretend it did not hurt. As a faculty member, I am expected to show my campus ID every time it is demanded of me. I may be expected to pretend it doesn’t hurt, but now I refuse to participate in the charade. There is often condescension in examinations of these supposedly fragile young people who don’t understand the real world. College students do, however, understand the real world, because they aren’t just students: They do not abandon their class background or sexuality or race or ethnicity when they matriculate, and their issues do not vanish when they register for courses. We should not dismiss their valid concerns. To do so, to invalidate their experiences, would be to invalidate their diversity and ignore their hurt. American colleges and universities have always been incubators for the privileged, and the only people who continue to operate there with some guarantee of physical and emotional safety are white, heterosexual men. Is it any wonder, then, that students are demanding a basic guarantee of safety? The story we cannot forget is that black students at both Mizzou and Yale reached a breaking point. These are students who could no longer endure what had become unbearable. They said, “Enough.” In Cultivating Humanity: A Classical Defense of Reform in Liberal Education, **Martha Nussbaum suggests that a liberal education, one designed to “produce free citizens,” should help students connect with their humanity and understand their place in the world. “It would be catastrophic,” she writes, “to become a nation of technically competent people who have lost the ability to think critically, to examine themselves, and to respect the humanity and diversity of others.” Activism is one way students can learn to become the free citizens Nussbaum describes. These are students who could no longer endure what had become unbearable. They said, “Enough.” Students have protested hikes in tuition, university policies on undocumented students, graduate student stipends and health insurance, predatory professors, sexual violence on campus, and many other issues. Sometimes, students protest provocative speakers, inept athletic directors, and toxic social media sites. They have directed their activism toward both national and global concerns including war and other military interventions, exclusionary legislation, reproductive freedom, racial inequality, and economic inequality. During the height of Occupy Wall Street, smaller**[**Occupy**](http://www.nytimes.com/2012/01/22/education/edlife/the-new-student-activism.html?_r=0) **sites began appearing at colleges and universities across the country.  Student activism is widespread, because some students are making the most of their college experience. They understand that this may very well be the last moment in their lives when they can confront real issues in an environment where they are forced to encounter people who don’t look like them, who don’t think like them, environments where change is still possible**. The Student Nonviolent Coordinating Committee and protestors at campuses across the country including Yale and Mizzou are part of a robust, vital tradition that we should not overlook. **Today’s student activists are doing the necessary work to ensure that the next generation that participates in the tradition of student activism will be fighting different battles.** Or, perhaps, they are doing the necessary work to ensure that students, of all identities, might have a fighting chance to experience college and life beyond more equally than those who came before them.

### Johnston

#### Free speech is intertwined with campus protests, which enables students to fight for change.

**Johnston:** Johnston, Angus [Writer and contributor, Rolling Stone] “There's No College P.C. Crisis: In Defense of Student Protesters.” *Rolling Stone.* December 2015. RP

Many of us, watching from afar, saw all this as a controversy in the best traditions of American college life — spirited debate, heated disagreement, rowdy protest. And if the stakes struck us as small, and some of the reactions overheated, that was [hardly unprecedented](http://studentactivism.net/2011/10/12/library-protests-and-coffee-break-riots-in-colorado/) either. For others, though, the events at Yale were a major scandal, confirmation that the U.S. higher education system is in a deep and dangerous crisis. The students who protested Christakis were, it was charged, a mob of censors — "[snowflake totalitarians](http://www.mindingthecampus.org/2015/11/snowflake-totalitarians-at-yale/)" who "[made no allowance for legitimate dissent](http://nymag.com/daily/intelligencer/2015/11/can-we-take-political-correctness-seriously-now.html)." How did we get to this point? **Why are such ordinary disagreements suddenly being cast as threats to the American university, even America itself?** Part of the answer lies in the fact that these disputes are now more public than they were in the past. **Our current boom in student protest is the first since streaming video and social media made every sit-in a real-time global spectacle. Twenty-five years ago, the last time the country freaked out about student radicals and "political correctness," we had a bit more distance, and maybe even a bit more perspective**. There's also the issue of who today's activists are, and what they believe. **The demographics of American higher education have been transformed dramatically since the 1960s, and the concerns of protesters have changed as a result. No previous generation of American student protesters foregrounded the concerns of women, students of color and LGBT students like this one has, or was so visibly led by people who weren't middle-class-or-better straight white men.** And much of the jargon of the current movement — [trigger warnings](https://www.insidehighered.com/views/2014/05/29/essay-why-professor-adding-trigger-warning-his-syllabus), microaggressions, safe spaces — can be off-putting, particularly to non-initiates.  But these explanations only go so far, particularly since so many of the movement's critics are self-proclaimed free-speech advocates. Even if they think the students' ideas are bad or weird, the right to put them forward is surely worth defending. **But that premise — that campus activists have free-speech rights that are worthy of robust and aggressive defense — has been largely absent from mainstream writing about contemporary campus culture.** Many high-profile commentators, in fact, have taken the opposite tack, claiming that the students' ideas are so bad and so weird as to represent a threat to free speech itself. A bizarre, but not unrepresentative, example: Early this year, a student theater group at Mount Holyoke College announced that they would no longer be staging their annual production of The Vagina Monologues, explaining that the play's "perspective on what it means to be a woman" is too "narrow" and "reductionist" for their taste. When word of this decision broke in the media, the troupe was widely accused of censorship. By canceling the play, Lizzie Crocker [wrote in The Daily Beast](http://www.thedailybeast.com/articles/2015/01/16/holyoke-is-too-pc-for-vagina-monologues.html), "you're excluding me from watching something I want to see." Feminist writer Meghan Murphy asserted that the group was "[silencing women](http://www.feministcurrent.com/2015/01/16/all-womens-college-mount-holyoke-deems-vaginas-exclusionary/)." New York magazine's Jonathan Chait, a leading critic of today's student activists, highlighted the Mount Holyoke case in [a widely read essay](http://nymag.com/daily/intelligencer/2015/01/not-a-very-pc-thing-to-say.html) that condemned political correctness as an "attempt to regulate political discourse by defining opposing views as bigoted and illegitimate." But who exactly was being censored here? Who was being silenced? What was being regulated? The troupe hadn't been forbidden to stage the play. They'd just decided not to. Surely the same freedom of speech that had given them the right to perform it gave them the right to stop. And even if other students had encouraged them in their decision — if, say, activists had gone to the troupe and explained their objections to the play and asked them not to put it on again, and the performers had mulled the request and decided to honor it — that wouldn't have been censorship either. It would have been dialogue, discussion — exactly the encounter of minds and ideas that the university is supposed to nurture.  Some will argue that I'm painting too rosy a picture of typical campus "discussions" around issues of identity and ideology in the year 2015. It's not rational discourse that such activists use to change people's behavior, [argues Conor Friedersdorf of The Atlantic](http://www.theatlantic.com/politics/archive/2015/11/race-and-the-anti-free-speech-diversion/415254/), a persistent critic of the movement, but "stigma, call-outs, and norm-shaping." But even granting that premise, since when is upholding norms something to condemn? When has publicly shaming people who do publicly bad things ever not been a legitimate part of political debate? Friedersdorf is shaming activists, not reasoning with them, when he describes them as overwrought children. I'm shaming Friedersdorf, not reasoning with him, when I point that fact out. And that's OK. There's nothing wrong with a little public shaming. In fact, sometimes a little public shaming is exactly what circumstances call for. **Last May,** [**news leaked**](http://www.nbcsandiego.com/investigations/SDSU-Professor-Still-Teaching-After-Sexually-Harassing-Student--301129881.html) **at San Diego State University that Vincent Martin, a tenured professor, had been found by campus investigators to have sexually harassed one of his undergraduate students. He'd neither been terminated nor publicly reprimanded — the whole thing had been swept under the rug. When students found out, they protested. They planned a picket outside of one of Martin's classrooms, and when he canceled that day's classes they plastered his office door and the surrounding walls with their signs and posters. The protesters' goal wasn't to engage Martin in discussion. They had no reason to believe that a rational consideration of the harms of sexual harassment would dissuade Martin from re-offending**, or, for that matter, convince the university to get him out of the classroom before he victimized someone else. (It has since emerged that Martin sexually harassed multiple students at two different universities.) No, what the protesters were engaged in was exactly what Friedersdorf criticizes: "stigma, call-outs, and norm-shaping." And they were right. That was what the situation required, and it worked — Vincent Martin is no longer employed at SDSU, and he will have a very difficult time finding another teaching job. **Sometimes, as Frederick Douglass once wrote, "it is not light that is needed, but fire; it is not the gentle shower, but thunder**." Some occasions call for rational debate, he said, but others demand nothing less than "a fiery stream of biting ridicule, blasting reproach, withering sarcasm, and stern rebuke." To acknowledge that is not to express hostility to discourse, but to embrace it — to embrace the power of speech in its full scope and capacity. **Student activists have always understood the power of thunder. And they understand as well that sometimes thunder, on its own, isn't enough. Sometimes you have to do more than just speak. Sometimes you have to organize — to, as the First Amendment says, assemble and pursue a redress of grievances. Sometimes, as Mario Savio declared in the greatest and most famous speech to emerge from the Free Speech Movement at Berkeley half a century ago, "the operation of the machine becomes so odious, makes you so sick at heart, that … you've got to put your bodies upon the gears and upon the wheels, upon the levers, upon all the apparatus, and you've got to make it stop."** Because sometimes putting your body upon the wheels is the only influence you have. [In a November essay](http://nymag.com/daily/intelligencer/2015/11/can-we-take-political-correctness-seriously-now.html), Jonathan Chait described the Yale students who protested Erika Christakis and her husband as "jeering student mobs expressing incredulity at the idea of political democracy," screamers who see debate as "irrelevant." But Yale is not a democracy, and the administrators who set and enforce its policies are not elected officials accountable to a campus electorate. What the activists understand, and what Chait does not, is that in the governance of the university — in the making and enforcing of the rules that govern students' lives — debate, however cogent, often is irrelevant.  Columbia professor John McWhorter, another critic of today's protesters, concedes that some of their goals have value. For instance, [he says](http://www.wsj.com/articles/closed-minds-on-campus-1448634626), "campus police must conquer any leaning toward treating students of color like potential criminals." But look at that framing — "police must conquer any leaning." Not "must be compelled to conquer," or "must be held accountable if they do not conquer," just "must conquer." And if they do not, what then? McWhorter doesn't say. We see this over and over from the protesters' critics. "If any discrete group of students is ever discriminated against," [Friedersdorf writes](http://www.theatlantic.com/politics/archive/2015/11/the-new-intolerance-of-student-activism-at-yale/414810/), then "of course … remedies should be implemented." But if they are not, again: What then? Unacknowledged here is the obvious: That students have very little direct power on the contemporary American campus. Administrators have lots of power. Trustees have lots of power. Faculty have quite a bit. But students have very little. And so a call to resolve campus disagreements by reasoned debate is a call to allow the people who have been setting the rules to continue to set the rules. Students understand this, and that's why they have little patience for decorum. It's why activists sometimes yell at professors. (And why the professors typically stay calm when yelled at.) It's why activists make demands — because the power to change the university directly isn't theirs to wield. I'm not saying that students should have the power to fire college presidents and remake curricula at will. (Not quite.) But I am saying that a "free speech" argument that ignores power — an argument that says "let the best debater win" without acknowledging that being the best debater is not, for students, a path to victory — is not an argument that any student activist will, or should, find convincing. Claims that student activists are trampling on free-speech rights are, as we've seen, frequently overblown. But to the extent that activists see free-speech arguments as, as [Jelani Cobb wrote recently](http://www.newyorker.com/news/news-desk/race-and-the-free-speech-diversion) in the New Yorker, a "diversion," it's largely a reflection of the constant use of "free speech" as a weapon against legitimate agitation by critics who don't understand that a student protest and a debating society are two different things. **Those of us who would have today's student activists embrace free-speech principles, rather than grudgingly tolerate them, need to defend the activists' free-speech rights. When they are** [**punished for marching**](http://www.chicagotribune.com/news/ct-loyola-student-protesters-reprimand-20151204-story.html)**, we must defend their right to march. When they say things we think are stupid, we must defend their right to say them. When they yell, we must defend their right to yell** — even at professors, and especially at professors who are saying things we find sensible. **When they engage in behavior that pushes at the boundaries of acceptable speech, we must remember that pushing at boundaries is what the First Amendment, and the university, are for**. When student activists [advocate policies](http://studentactivism.net/2015/11/18/free-speech-and-student-activism-at-amherst-college/) that would, if implemented, compromise essential free-speech guarantees — punishing fellow students for constitutionally protected speech, for instance — their proposals are worthy of pushback. **But if we are really committed to preserving a climate of rigorous, robust disputation on campus, we have to commit to defending students' right to agitate for what they believe in — which means distinguishing speech we find obnoxious from acts that threaten free expression itself. We have to stop screaming "censor" every time a student says a challenging thing in a challenging way, and we have to start rebuking those who do.** If the critics of the current student movement continue to reflexively demonize students' speech, tactics and demands as hostile to free-speech principles, students will continue to tune those critics out — and rightly so. **Today's campus activists are raising urgent questions about the proper character of the university, initiating debates that will only grow broader and more important as the campus movement continues to develop. Their ideas deserve supportive engagement, not dismissal.**

### Block

#### Free speech enables protests that cause a cultural shift – the 1950s prove counter-cultural movements were effective in changing minds.

**Block:** Block, Jim [Jim Block teaches Political Theory and Political Culture at DePaul University, and writes for truthout and Huffington Post on contemporary political and cultural transformation. He has written two books, A Nation of Agents (2002) and The Crucible of Consent (2012) and is writing a third volume on the emerging crisis of American society in the twentieth century, and lectures and conducts workshops on creating sustainable psychological and social change.] “The Legacy And Promise Of The Free Speech Movement.” Popular Resistance. October 2014. RP

**This past weekend was the 50th reunion of the Free Speech Movement at the University of California at Berkeley. At the beginning of the fall term of 1964, the university administration imposed a series of strict regulations limiting the right of students to engage in political soliciting on campus. Berkeley students had for several years been active in opposing the House Un-American Activities Committee, pro-labor, and anti-racism protests and demonstrations throughout the Bay area**. This picture of the university as a hotbed of political activism was undermining the carefully honed image being disseminated by the state of California as the leader in public higher education: in the conservative post-war period, Berkeley was being touted as not only a world class research university but at the forefront of preparing a modern elite meritocratic student body primed for corporate and governmental leadership. What the university administration failed to consider was the fact that many activist Berkeley students had embraced new levels of commitment to political organizing by participating in Freedom Summer, an initiative by radical civil rights organizations in the South to mobilize black Americans to challenge segregation and demand voting rights. **After resolutely confronting white segregationists and racist – often violent – local public officials as full-fledged democratic activists, a university administration seeking to curtail their political expression and ignoring their insistence on the urgency of social change struck these battle-tested students as demeaning and even infantilizing. Even more decisively, these acts implicated the new model university as the central institution in integrating younger generations into the corporate, hierarchical, expansionist values increasingly driving American society**. It suddenly became clear that the degree was being marketed not for any educational value but as a ticket punched to the higher levels of this post-war order and to material success, social status, and a suburban lifestyle widely being identified as the American dream. Once the university intervened, in other words, the political dynamic shifted. **What had begun as an effort to support other movements for social equity and integration quickly shifted before everyone’s eyes to a demand for the liberation of students and youth and the democratization of the institutions shaping their lives** as a prelude to broader social transformation**. This is the Free Speech Movement (FSM) whose message spread throughout the U.S. and beyond, catalyzing and exposing generational tensions and revealing the compliance-oriented program of American socialization**. I came to Berkeley as a neophyte, a completely apolitical and uninformed undergraduate, just days before the campus controversies began. And because the events of the next couple of years became the defining experience of my life about which I have written and taught ever since (trying to make sense of it), this reunion gave me an unparalleled opportunity to reflect on and rethink that experience in conversation with this unique community of participants in this defining moment. The weekend of intensive group discussions, panels, and informal interchange helped me to expand on and fine-tune my (always provisional) conclusions. At the time, the heavily politicized students with developed analyses of American political shortcomings, systemic racism, labor inequities, and foreign adventurism appeared to have come from another planet. They were impassioned and determined which contrasted strikingly with my confusion about the issues, uncertainty about what to do, and doubt that big picture issues even mattered. As I worked tirelessly over the next years to overcome the most glaring deficiencies in my political and cultural education and to formulate a beginning social activist agenda and vision of cultural change, I sensed that this journey I took with many other undergraduates led me to a different place than the FSM activists. All these years later, I was able through the reunion weekend to gain new clarity about these differences. Long ago, I had divided the alternative Berkeley students (others of course cared more about the Greek system and football, but they went to Cal and not Berkeley) into three, though somewhat overlapping, groups: the committed politicos, the more theoretically minded intellectuals, and the lifestyle experimenters widely called hippies. I found myself drawn to the intellectuals, and while participating in protest activities (and some lifestyle experimentation) I never got intensively involved enough with political organizing to fully discern their orientation. This weekend, attended overwhelmingly by politicos, was enlightening. The most committed FSM participants were graduate students. Born before or during World War II and coming of age in the late Fifties, their political ideals had been formed not in the just emerging upheavals of the counterculture but in the quiescent era before. Their inspiration, evident in the group sing-a-long late Saturday night of protest folk songs of the Weavers and others and anthems from progressive summer camp and peace school experiences, was anti-McCarthyite and social justice mobilizing extending back to the radical populism of the pre-war social movements. The expectation was that political organizing was a long, hard, rarely successful march against dominant and intransigent institutions, and few of them were prepared for the collapse of the Berkeley administration’s policies and legitimacy in the face of student demands. These participants, true to their early self-definitions, have since then sustained lives of activism in diverse progressive causes, and these made for great and inspiring stories. At the same time, they have returned to the view that progressives rarely win big, though one can retain the joy of principled fighting against the beast on fronts everywhere and in savoring victories when they occur. One can also take heart from movement solidarity for refusing to buckle as others, perhaps even their own families of origin and so many today, often do. And yet, connected with one of the two other groups that only arose with the emerging counterculture after the terrain of controversy shifted to youth politics and the quality of middle class life being portrayed as the universal dream, I could see where the FSM diverged from what came later. The politicos took as their immediate precursors the civil rights and to a lesser degree labor organizing movements, the causes prominent among left activists as they came of age. Occasionally the rhetoric, as with the now deceased FSM leader Mario Savio, identified the particular repressions in the university, yet the tendency was to include students as one dispossessed group demanding a voice with the others. **What I gathered from numerous conversations and group discussions is that they did not really appreciate – or perhaps regard as significant – how the counterculture radically altered the political-cultural landscape**. One reason that the Sixties in its full counterculture profusion broke out first (and more extensively) in Berkeley and the Bay area is that this region of northern California had served for decades as a place of immigration for refugees from mainstream culture, beats and bohemians and idealists and iconoclasts of all kinds. **It had been evolving a new lifestyle and value orientation, affirming more self-actualizing, self-expressive, anti-bureaucratic, libidinally open, artistic and less workaholic and role dependent lives than the places those arriving had come from**. Once the attack on university rigidities and in loco parentis regulations was successful, the way was cleared for students to begin asking questions about and in turn simply reject the repressively conformist American lifestyle. They now had permission – or were without opposition – in seeking new answers for themselves by experimenting in every aspect of their daily and collective lives. This experimentation became the catalyst for the hippie culture, while the deeper questions about why this presumably freest of presumably all free societies could not handle – or even entertain – the demand of its most educated and aware younger generation for, precisely, genuine freedom gave birth to a new kind of intellectual cohort. This latter group was eager to challenge the reigning assumptions of the industrial age about work, consumption, status, conformity and self-repression as a substitute for freedom and selfhood, as well as to open up the dynamic of post-industrial affluence, automation, declining work, social redistribution, and cultural independence. Moreover, the underlying issue of how and why a self-proclaimed free society had turned out to contain such ubiquitous structures of repression led many to investigate and to interrogate the historical and conceptual roots of the American project. Out of this the Sixties moved into high gear. In several conversations about the legacy of FSM some of these complexities surfaced. The politicos for the most part were concerned with how a more effective mass movement of the economically marginalized could be organized and broadened to include others such as victims of the prison-industrial complex and the exclusionary voting regulations as well as women suffering from the new attacks on women’s rights. There was little discussion of whether the society this would produce would be a good and worthwhile achievement or simply integrate these groups into the corporate and conformist lifestyle, in large part because these are on-going battles that no one expects to win. The main speaker who addressed the cultural issues and the dangers of mere oppositionalism was Michael Lerner, the founder-editor of Tikkun magazine and one of the leading spokespersons during FSM Lerner discussed the need for a broader positive vision beyond continually reacting to the (endless) venal actions of the corporate-governmental system that would mobilize citizens to a politics of change. He further insisted that a progressive movement needed to address the spiritual crisis of materialism and unfulfilled lives in mainstream America, but did not offer more than a bare outline of what this process would entail. Lerner’s suggestions were thoughtfully received but led to no further discussion. Since my scholarly and activist work has been dedicated to the psychocultural issues raised by the counterculture, offered a couple of statements evoking the world that the radical Berkeley intellectuals and hippie communards long ago first imagined. I suggested that in thinking about legacies (on everyone’s mind) the FSM was both unimaginably successful and not by any means successful enough. The movement critique pointed out the emptiness of the dream that Americans are induced to crave and consume, and did so in such vivid and dramatic detail that people connected with the vacuum in meaning at a deep level of recognition and self-doubt. This is a challenge which American society has never even begun to rebut, simply (as Mad Men portrays it) selling it more seductively and imposing it more insistently. Americans as a result have since then felt if inchoately the presence of an iron cage, which they live in out of compliance rather than a sense of conviction experienced by citizens in the past. The burgeoning movement also opened up the possibility of new ways of living a more self-actualizing personal journey and forming more mutually validating communities and institutional commitments than allowed by consumer capitalism. What participants did not realize, having just reached the frontier of a historic social transformation from the industrial to the post-industrial age, is the scale of internal and collective work involved in producing such a new civilization. A more empowered selfhood nurtured by new forms of child rearing as the source of new political, economic, community, educational, and family institutions would have to be evolved through long trial and error. Because no one was ready for these challenges, Americans of all political persuasions have retreated since the Sixties into the shell of the old ways, which survive now primarily on inertia and fear. This was by no means the fault of FSM or the broad movement of youth and students that followed, but one of the unavoidable consequences of historical transition. A number of people came up to me afterward and during the weekend to support and add their reflections to these comments. This was immensely gratifying, and suggested a set of issues worthy of pushing forward at the next reunion. In the meantime, a number of veterans of the struggle that I met related their experiences in new forms of community, particularly in the western states, communities that they live in or had lived in or live near and work with, and I was grateful for the invitations they extended to visit and spend time in these new social experiments. Engaging these evolving dreams and their dreamers, which seemed so palpable as the movement first took wing in a Berkeley that reached to the future, should keep me busy for a while.

### Workers Liberty

#### Speech is being stifled on campus now, shutting out alternative viewpoints

**Workers’ Liberty:** Workers’ Liberty [Blog that writes about capitalism and perspectives about addressing it] “Universities, capitalism and free speech.” *Workers’ Liberty.* March 2015. RP

**For centuries, university campuses have been, relatively speaking, a haven within capitalist society for free debate and criticism**. A high point, for much of the 20th century, was the right which universities in Latin America won to keep the police off their campuses and have university officials elected by staff and students. That began with the University Reform Movement in Córdoba, in northern Argentina, which opposed a focus on learning by rote, inadequate libraries, poor instruction, and restrictive admission criteria, and spread across the subcontinent. **The student radicalism which spread across much of the world in 1968 started, in 1964-5, with a Free Speech Movement at the University of California, Berkeley**. The central avenues through campus had become a lively scene, with street stalls and political gatherings; the university authorities tried to clamp down, and were eventually defeated. **Today free debate and criticism on campus is under threat from several angles. The government wants universities to ban speakers from their campuses who would be quite legal elsewhere. University administrations ban meetings, even without government prompting, when they think they might cause trouble or uproar. Campus space is increasingly commercialised and franchised-out, and university bosses try to stop student postering, leafleting, and campaigning affecting the “commercial space”.** Student unions are increasingly run by people who think that a spell as student union president will look good on their CV when they apply for a managerial job. University lecturers’ careers depend on how many articles they get published in “leading” (i.e., in almost all fields, orthodox) journals. **Over generations of academic turnover, this produces university departments filled with staff who have been selected by capacity to get wordage into those journals, and who in turn will go on to run those journals, oblivious to critiques or alternative approaches.** This narrows the range of teaching and debate on courses. Finally, and paradoxically, the shutting-down of debate is sometimes promoted by student activists who consider themselves left-wing. A chief example is the bans on the Socialist Workers Party imposed by Goldsmiths and Edinburgh University student unions, and attempted elsewhere.

#### Exploration of scholarship is limited by neoliberals under the guise of speech restrictions

**Workers’ Liberty:** Workers’ Liberty [Blog that writes about capitalism and perspectives about addressing it] “Universities, capitalism and free speech.” *Workers’ Liberty.* March 2015. RP

This excerpt is taken from a report published in 2014 by critical economics students at Manchester University, and sums up how thought has been narrowed within the lecture halls and seminar rooms. "**As little as 15 years ago the Economics Department at Manchester had a considerably wider range of professors who self-identified with different economic paradigms and had very different research agendas.** This led to a far more eclectic undergraduate syllabus with modules such as comparative economic theory, comparative economic systems and alternative perspectives on developing economies being available for students to study. **The Economics Department has radically changed in composition in the last 15 years and it is these changes that are the root cause of many of the problems we outlined. The Research Excellence Framework (REF) and academic journals have the power to define what is and isn’t economics and within that, what is good economics and bad economics**. REF determines how much research funding each university gets and is a label of research prowess. Every four years a panel of leading academic economists grade departments on the basis of individual publications whose academic quality is inferred from the status and ranking of economics journals. The problem is that there are no recognisably heterodox economists on this panel and that the grading is done behind closed doors with only departmental ratings published. The outcome of the REF rating process is to elevate the neoclassical framework to the standard by which all economics research is judged. Departments and individual lecturers are forced to respond to the definitions of economics set by these bodies... Academic economists must work with neoclassical assumptions and methodology if they wish to secure academic tenure and advance within the leading economics departments... As nonmainstream Manchester professors have retired from expanding departments they have been replaced by young recruits [who] represent a narrow range of mainstream economists who had been published, or were more likely to be published, in the mainstream American journals (Big 5: AER, Chicago etc). **This homogeneity puts the Department in the position of not having the capability to teach other schools of thought or history of economic thought. This narrowing process reinforces itself; now many young lecturers and teaching assistants aren’t able to facilitate critical discussions** including alternative economic perspectives in tutorials because their economics education has lacked those elements. **This monoculture also makes it easier for professors to believe that their way is the only way to do economics** or at least that it is the only valid way, which in turn justifies its status as the only kind of economics taught at our university... **Non-mainstream economists at Manchester have been stripped of their titles as economists and pushed out to peripheral positions in development studies** and suchlike while various kinds of heterodox political economy have taken root in the business school, politics, geography and history departments."

### Farber

#### Free speech is key to a capitalist struggle – restrictions on speech result in the suppression of radical speakers.

**Farber:** Farber, Samuel [Samuel Farber has been involved in left and socialist politics for well over fifty years. His most recent book is [The Politics of Che Guevara: Theory and Practice](http://www.haymarketbooks.org/pb/The-Politics-of-Che-Guevara).] “A Socialist Approach to Free Speech.” Jacobin Magazine. February 2017. RP

**When grappling with the question of free speech, socialists should look not to Isaiah Berlin, the model of courage in defense of free speech evoked by Garton Ash, but to Rosa Luxemburg, who insisted that free expression was designed for those who disagree**. The view presented here differs not only from liberalism but also from left currents that adhere to authoritarian-from-above visions of socialism. **Among these are the longstanding notions explicitly or implicitly advocating for an “educational dictatorship” of enlightened intellectuals, as found in Herbert Marcuse’s work. In A Critique of Pure Tolerance, he argues that we should suppress the powerful’s right to free speech because they aim to brainwash the minds of the people. His argument rests on the implicit claim that intellectuals like him should decide what ideas the people should be exposed to.** Like Garton Ash, Marcuse bases his analysis of free speech on tolerance and similarly cannot produce a solid defense of the right to free expression. **This seems ironic since Marcuse and those who agreed with him were a small minority — their ideas were more likely to be suppressed than the rulers’**. Luxemburg’s position also differs from Stalinist and neo-Stalinist politics in all its expressions, which wrongly maintain that Marx was not interested in defending “bourgeois” individual rights and political democracy. In fact, Marx’s politics were deeply rooted in his time’s radical democratic movements. In his first article, he sharply criticizes the government decree that established censorship, arguing: The writer is thus subjected to the most frightful terrorism, the jurisdiction of suspicion. Laws about tendency, laws that do not provide objective norms, are laws of terrorism, such as were conceived by the state’s exigencies under Robespierre and the state’s rottenness under the Roman emperors. For some left currents, free speech and other democratic freedoms serve as an ideological cover for the bourgeoisie’s defense of private property**. In fact, the capitalist bourgeoisie has never been deeply committed to free speech and other civil liberties, happily coexisting with a wide variety of antidemocratic political regimes, South African apartheid and fascism included**. In the last analysis, private ownership of the means of production allows capitalists to maintain social and economic power independent of the political system. Indeed, breaking the ruling class control over socioeconomic power and establishing collective ownership depends on democracy: “the first step in the revolution by the working class,” proclaimed The Communist Manifesto, “is to raise the proletariat to the position of ruling class, to win the battle of democracy.” **For the most part, struggles for democratic rights — such as free speech, the abolition of slavery, universal suffrage, workers’, and women’s rights — came after the bourgeois revolution. They were democratic conquests won through popular struggle. Free speech, free association, and other democratic freedoms allowed workers to fight for their interests.** Some proponents of socialism from above tend to defend democratic freedoms only for the working class, but this perspective has a narrow and parochial view of a class that should be, as Lenin argued, “the tribune of the people,” the representative of the interests of the great social majority, and runs contrary to the socialist tradition’s strong emphasis on demanding universal political rights such as suffrage. In a more cynical vein, this political current has demanded free speech and other democratic rights only when they belong to the persecuted opposition. In contrast to this view, as Hal Draper argued in his 1968 article “Free Speech and Political Struggle”: “There can be no contradiction, no gulf in principle between what is demanded of the existing state, and what we propose for the society we want to replace it, a free society.” **Consistent with this approach, we must defend free speech on its own terms**, not merely because it helps to organize and fight for a new society. In this, free speech does not differ from the economic advances the working class and its allies have won. They are valuable both in their own right and because they strengthen the working class and its allies in their struggle for their emancipation.

### Malik

#### Discount international evidence on hate speech – there’s no one definition of what hate speech is.

**Malik:** Malik, Kenan [I am a writer, lecturer and broadcaster. My latest book is *The Quest for a Moral Compass: A Global History of Ethics*.] “Why hate speech should not be banned.” *Pandaemonium.* 2012. RP

Kenan Malik: **I am not sure that ‘hate speech’ is a particularly useful concept. Much is said and written, of course, that is designed to promote hatred. But it makes little sense to lump it all together in a single category, especially when hatred is such a contested concept**. In a sense, hate speech restriction has become a means not of addressing specific issues about intimidation or incitement, but of enforcing general social regulation. **This is why if you look at hate speech laws across the world, there is no consistency about what constitutes hate speech. Britain bans abusive, insulting, and threatening speech. Denmark and Canada ban speech that is insulting and degrading. India and Israel ban speech that hurts religious feelings and incites racial and religious hatred. In Holland, it is a criminal offense deliberately to insult a particular group. Australia prohibits speech that offends, insults, humiliates, or intimidates individuals or groups. Germany bans speech that violates the dignity of, or maliciously degrades or defames, a group. And so on. In each case, the law defines hate speech in a different way.**

#### Free speech about religion is key to safeguard the right to worship – the Aff spills over positively.

**Malik:** Malik, Kenan [I am a writer, lecturer and broadcaster. My latest book is *The Quest for a Moral Compass: A Global History of Ethics*.] “Why hate speech should not be banned.” *Pandaemonium.* 2012. RP

KM: It is as idiotic to imagine that one could defame religion as it is to imagine that one could defame politics or literature. Or that the Bible or the Qur’an should not be criticized or ridiculed in the same way as one might criticize or ridicule The Communist Manifesto or On the Origin of Species or Dante’s Inferno. A religion is, in part, a set of beliefs – about the world, its origins, and humanity’s place in it – and a set of values that supposedly derive from those beliefs. Those beliefs and values should be treated no differently to any other sets of beliefs, and values that derive from them. **I** **can be hateful of conservatism or communism. It should be open to me to be equally hateful of Islam and Christianity.** Proponents of religious defamation laws suggest that religion is not just a set of beliefs but an identity, and an exceptionally deeply felt one at that. It is true that religions often form deep-seated identities. But, then, so do many other beliefs. Communists were often wedded to their ideas even unto death. Many racists have an almost visceral attachment to their beliefs. Should I indulge them because their views are so deeply held? And while I do not see my humanism as an identity with a big ‘I’, I would challenge any Christian or Muslim to demonstrate that my beliefs are less deeply held than theirs. **Freedom of worship – including the freedom of believers to believe as they wish and to preach as they wish – should be protected**. Beyond that, religion should have no privileges. **Freedom of worship is, in a sense, another form of freedom of expression – the freedom to believe as one likes about the divine and to assemble and enact rituals with respect to those beliefs. You cannot protect freedom of worship, in other words, without protecting freedom of expression. Take, for instance, Geert Wilders’ attempt to outlaw the Qur’an in Holland because it ‘promotes hatred’.** Or the investigation by the British police a few years ago of Iqbal Sacranie, former head of the Muslim Council of Britain, for derogatory comments he made about homosexuality. Both are examples of the way that defense of freedom of religion is inextricably linked with defense of freedom of speech. Or, to put it another way, in both cases, had the authorities been allowed to restrict freedom of expression, it would have had a devastating impact on freedom of worship. That is why the attempt to restrict defamation of religion is, ironically, an attack not just on freedom of speech but on freedom of worship too – and not least because one religion necessarily defames another. Islam denies the divinity of Christ, Christianity refuses to accept the Qur’an as the word of God. Each Holy Book blasphemes against the others. One of the ironies of the current Muslim campaign for a law against religious defamation is that had such a law existed in the seventh century, Islam itself would never have been born. The creation of the faith was shocking and offensive to the adherents of the pagan religions out of which it grew, and equally so to the two other monotheistic religions of the age, Judaism and Christianity. Had seventh-century versions of today’s religious censors had their way, the twenty-first-century versions may still have been fulminating against offensive speech, but it certainly would not have been Islam that was being offended. At the heart of the debate about defamation of religion are actually not questions of faith or hatred, but of political power. **Demanding that certain things cannot be said, whether in the name of respecting faith or of not offending cultures, is a means of defending the power of those who claim legitimacy in the name of that faith or that culture**. It is a means of suppressing dissent, not from outside, but from within. What is often called offense to a community or a faith is actually a debate within that community or faith. In accepting that certain things cannot be said because they are offensive or hateful, those who wish to restrict free speech are simply siding with one side in such debates – and usually the more conservative, reactionary side

#### *All* free speech should be heard – even bad ideas shouldn’t be silenced –Britain empirically confirms that censorship makes violence worse.

**Malik:** Malik, Kenan [I am a writer, lecturer and broadcaster. My latest book is *The Quest for a Moral Compass: A Global History of Ethics*.] “Why hate speech should not be banned.” *Pandaemonium.* 2012. RP

PM: **Do you support content-based bans of ‘hate speech’ through the criminal law, or do you instead agree with the American and Hungarian approach**, which permits prohibition only of speech that creates imminent danger? KM: I believe that no speech should be banned solely because of its content; **I would distinguish ‘content-based’ regulation from ‘effects-based’ regulation and permit the prohibition only of speech that creates imminent danger. I oppose content-based bans both as a matter of principle and with a mind to the practical impact of such bans**. Such laws are wrong in principle because free speech for everyone except bigots is not free speech at all. It is meaningless to defend the right of free expression for people with whose views we agree. **The right to free speech only has political bite when we are forced to defend the rights of people with whose views we profoundly disagree. And in practice, you cannot reduce or eliminate bigotry simply by banning it. You simply let the sentiments fester underground.** As Milton once put it, to keep out ‘evil doctrine’ by licensing is ‘like the exploit of that gallant man who thought to pound up the crows by shutting his Park-gate’. **Take Britain. In 1965, Britain prohibited incitement to racial hatred as part of its Race Relations Act. The following decade was probably the most racist in British history. It was the decade of ‘Paki-bashing’, when racist thugs would seek out Asians to beat up**. It was a decade of firebombings, stabbings, and murders. In the early 1980s, I was organizing street patrols in East London to protect Asian families from racist attacks. Nor were thugs the only problem. Racism was woven into the fabric of public institutions. The police, immigration officials – all were openly racist. In the twenty years between 1969 and 1989, no fewer than thirty- seven blacks and Asians were killed in police custody – almost one every six months. The same number again died in prisons or in hospital custody. When in 1982, cadets at the national police academy were asked to write essays about immigrants, one wrote, ‘Wogs, nignogs and Pakis come into Britain take up our homes, our jobs and our resources and contribute relatively less to our once glorious country. They are, by nature, unintelligent. And can’t at all be educated sufficiently to live in a civilised society of the Western world’. Another wrote that ‘all blacks are pains and should be ejected from society’. So much for incitement laws helping create a more tolerant society. Today, Britain is a very different place. Racism has not disappeared, nor have racist attacks, but the open, vicious, visceral bigotry that disfigured the Britain when I was growing up has largely ebbed away. It has done so not because of laws banning racial hatred but because of broader social changes and because minorities themselves stood up to the bigotry and fought back. Of course, as the British experience shows, hatred exists not just in speech but also has physical consequences. Is it not important, critics of my view ask, to limit the fomenting of hatred to protect the lives of those who may be attacked? In asking this very question, they are revealing the distinction between speech and action. Saying something is not the same as doing it. But, in these post-ideological, postmodern times, it has become very unfashionable to insist on such a distinction. In blurring the distinction between speech and action, what is really being blurred is the idea of human agency and of moral responsibility. Because lurking underneath the argument is the idea that people respond like automata to words or images. But people are not like robots. They think and reason and act on their thoughts and reasoning. Words certainly have an impact on the real world, but that impact is mediated through human agency. Racists are, of course, influenced by racist talk. It is they, however, who bear responsibility for translating racist talk into racist action. Ironically, for all the talk of using free speech responsibly, the real consequence of the demand for censorship is to moderate the responsibility of individuals for their actions. Having said that, there are clearly circumstances in which there is a direct connection between speech and action, where someone’s words have directly led to someone else taking action. Such incitement should be illegal, but it has to be tightly defined. There has to be both a direct link between speech and action and intent on the part of the speaker for that particular act of violence to be carried out. Incitement to violence in the context of hate speech should be as tightly defined as in ordinary criminal cases. In ordinary criminal cases, incitement is, rightly, difficult legally to prove. The threshold for liability should not be lowered just because hate speech is involved.

### Giroux – Radical Politics

#### A radical stance to the status quo begins with ensuring students are engaged and empowered – only this approach can create social activism.

**Giroux:** Giroux, Henry A. [Waterbury Chair Professor, Pennsylvania State University] “Henry A. Giroux | Radical Politics in the Age of American Authoritarianism: Connecting the Dots.” *Truthout.* April 2016. RP

In this instance, making the political more pedagogical becomes central to any viable notion of politics. **That is, if the ideals and practices of democratic governance are not to be lost, we all need to continue producing the critical formative cultures capable of building new social, collective and political institutions that can both fight against the impending authoritarianism in the United States and imagine a society in which democracy is viewed no longer as a remnant of the past but rather as an ideal that is worthy of continuous struggle.** It is also crucial for such struggles to cross national boundaries in order to develop global alliances. **At the root of this notion of developing a comprehensive view of politics is the need for educating ourselves by developing a critical formative culture along with corresponding institutions that promote a form of permanent criticism against all elements of oppression and unaccountable power. One important task of emancipation is to fight the dominant culture industry by developing alternative public spheres and educational institutions capable of nourishing critical thought and action. The time has come for educators, artists, workers, young people and others to push forward a new form of politics in which public values, trust and compassion trump neoliberalism's celebration of self- interest, the ruthless accumulation of capital, the survival-of-the-fittest ethos and the financialization and market-driven corruption of the political system.** Political responsibility is more than a challenge -- it is the projection of a possibility in which new modes of identification and agents must be enabled that can sustain new political organizations and transnational anti-capitalist movements. Democracy must be written back into the script of everyday life, and doing so demands overcoming the current crisis of memory, agency and politics by collectively struggling for a new form of politics in which matters of justice, equity and inclusion define what is possible. Such struggles demand an increasingly broad-based commitment to a new kind of activism. **As Robin D. G. Kelley has recently noted there is a need for more pedagogical, cultural and social spaces that allow us to think and act together, to take risks and to get to the roots of the conditions that are submerging the United States into a new form of authoritarianism wrapped in the flag, the dollar sign and the cross.** Kelley is right in calling for a politics that places justice at its core, one that takes seriously what it means to be an individual and social agent while engaging in collective struggles. We don't need tepid calls for repairing the system; instead, we need to invent a new system from the ashes of one that is terminally broken. We don't need calls for moral uplift or personal responsibility. We need calls for economic, political, gender and racial justice. Such a politics must be rooted in particular demands, be open to direct action and take seriously strategies designed to both educate a wider public and mobilize them to seize power. The left needs a new political conversation that encompasses memories of freedom and resistance. Such a dialogue would build on the militancy of the labor strikes of the 1930s, the civil rights movements of the 1950s and the struggle for participatory democracy by the New Left in the 1960s. At the same time, there is a need to reclaim the radical imagination and to infuse it with a spirited battle for an independent politics that regards a radical democracy as part of a never-ending struggle. **None of this can happen unless progressives understand education as a political and moral practice crucial to creating new forms of agency, mobilizing a desire for change and providing a language that underwrites the capacity to think, speak and act so as to challenge the sexist, racist, economic and political grammars of suffering produced by the new authoritarianism. The left needs a language of critique that enables people to ask questions that appear unspeakable within the existing vocabularies of oppression**. We also need a language of hope that is firmly aware of the ideological and structural obstacles that are undermining democracy. We need a language that reframes our activist politics as a creative act that responds to the promises and possibilities of a radical democracy. Movements require time to mature and come into fruition. They necessitate educated agents able to connect structural conditions of oppression to the oppressive cultural apparatuses that legitimate, persuade, and shape individual and collective attitudes in the service of oppressive ideas and values. Under such conditions, radical ideas can be connected to action once diverse groups recognize the need to take control of the political, economic and cultural conditions that shape their worldviews, exploit their labor, control their communities, appropriate their resources, and undermine their dignity and lives. **Raising consciousness alone will not change authoritarian societies, but it does provide the foundation for making oppression visible and for developing from below what Étienne Balibar calls "practices of resistance and solidarity." We need not only a radical critique of capitalism, racism and other forms of oppression, but also a critical formative culture and cultural politics that inspire, energize and provide elements of a transformative radical education in the service of a broad-based democratic liberation movement.**

### Giroux – War Culture and Militarism

#### Trump is here to stay and the Orwellian nightmare has become a reality – education has been ceded to the militarized right, and violence runs rampant. Education is crucial to reclaim spaces of resistance – the Role of the Judge is to Promote Critical Education.

**Giroux:** Giroux, Henry A. [Waterbury Chair Professor, Pennsylvania State University] “War Culture, Militarism, and Racist violence Under Trump.” *Truthout.* December 2016. RP

**With Donald Trump's election as president of the United States, the scourge of authoritarianism has returned not only in the toxic language of hate, humiliation and bigotry, but also in the emergence of a culture of war and violence that looms over society like a plague**. War has been redefined in the age of global capitalism: it has expanded its boundaries and now shapes all aspects of society. As Ulrich Beck observes "the distinctions between war and peace, military and police, war and crime, internal and external security" have collapsed. As violence and politics merge to produce an accelerating and lethal mix of bloodshed, pain, suffering, grief and death, American culture has been transformed into a culture of war. War culture reaches far beyond the machineries that enable the United States to ring the world with its military bases, produce vast stockpiles of weapons, deploy thousands of troops all over the globe and retain the shameful title of "the world's preeminent exporter of arms, with more than 50 percent of the global weaponry market controlled by the United States," as reported by Denver Nicks War culture provides the educational platforms that include those cultural apparatuses, institutions, beliefs and policies with the capacity to produce the discourses, spectacles of violence, cultures of fear, military values, hypermasculine ideologies and militarized policies that give war machines their legitimacy, converting them into symbols of national identity, if not honored ideals. Under such circumstances, the national security state replaces any viable notion of social security and the common good. **As a militarized culture is dragged into the center of political life, fear feeds a discourse of bigotry, insecurity and mistrust, adding more and more individuals and groups to the register of repression, disposability and social death**. Violent lawlessness no longer registers ethical and moral concerns, and increasingly has become normalized. How else to explain Trump's comment, without irony or remorse, during a campaign rally in Iowa that he could "stand in the middle of Fifth Avenue and shoot somebody" and not "lose any voters"? Ruthlessness, narcissism and bullying are the organizing principles of Trump's belief that only winning matters and that everything is permitted to further his own self-interests. These are the values that underlie his call for "law and order," which is more properly understood as a call for the lawlessness of the police state. Another register of lawlessness is evident in the presence of a ruthless market-driven corporate culture marked by an economic and political system mostly controlled by the ruling financial elite. This is a mode of corporate lawlessness that hoards wealth, income and power through the mechanisms of a national security state, mass surveillance, the arming of local police forces, a permanent war economy and an expansive militarized foreign policy. Trump's recent appointments of neoliberal elites, such as Steven Mnuchin, a long- time hedge fund manager and investment banker, to be his treasury secretary and Wilbur Ross, a billionaire investor, to head the Commerce Department make clear that he intends to allow the managers of big banks, hedge funds and other major financial institutions to run the economy. **This is an upgraded version of neoliberalism which, as Cornel West points out serves to "reinforce corporate interests, big bank interest, and to keep track of those of who are cast as peoples of color, women, Jews, Arabs, Muslims, Mexicans, and so forth**.... So, this is one of the most frightening moments in the history of this very fragile empire and fragile republic." Military Mania Trump's appointment of warmongering, right-wing military personnel to top government posts and his ongoing rhetoric suggesting the need for a vast expansion of the military-industrial complex signal a further intensification of America's war culture, one that inspired an article to be published in Forbes with the headline: "For The Defence Industry, Trump's Win Means Happy Days Are Here Again." William D. Hartung makes the latter point clear by citing a speech Trump gave in Philadelphia before the election in which he called for tens of thousands of additional troops, a Navy of 350 ships, a significantly larger Air Force, an anti-missile, space-based Star Wars-style program of Reaganesque proportions, and an acceleration of the Pentagon's $1 trillion "modernization" program for the nuclear arsenal.... [all of which] could add more than $900 billion to the Pentagon's budget over the next decade. Evidence for an updated and expansive war culture is also visible in Trump's willingness to consider a mob of racist neoconservatives for inclusion in his administration -- picks, such as John Bolton and James Woolsey, both of whom believe that "Islam and the Arab world are the enemy of Western civilization" and are strong advocates of a war with Iran. He has welcomed disgraced military leaders, such as David H. Petraeus, former four-star Army general and director of the Central Intelligence Agency; he has appointed as secretary of defense retired United States Marine Corps Gen. James Mattis who opposed closing Guantánamo, along with Obama's nuclear treaty with Iran. Mattis was brusquely fired by the Obama administration as the Central Command boss. Meanwhile, in a particularly worrisome appointment, Trump has chosen retired Gen. Michael Flynn to become his National Security Advisor. Flynn was fired for abusive behavior, has been accused of mishandling classified information, and is a firm supporter of Trump's pro-torture policies. The New York Times reported that Flynn, who will occupy "one of the most powerful roles in shaping military and foreign policy.... believes Islamist militancy poses an existential threat on a global scale, and the Muslim faith itself is the source of the problem ... describing it as a political ideology, not a religion." In other words, Flynn believes that 1.3 billion Muslims are the enemy of Western civilization. He has also claimed "that Sharia, or Islamic law, is spreading in the United States" (it is not). His dubious assertions are so common that when he ran the Defense Intelligence Agency, subordinates came up with a name for the phenomenon: They called them "Flynn facts." Trump's love of the military suggests that he will expand rather than cut back on America's infatuation with its wars, and will do nothing to alter a dishonorable foreign policy standard that has propelled the US into a permanent war status for the larger part of the 21st century. As Andrew Bacevich has pointed out since the latter part of 2001 this has resulted in "something like 370,000 combatants and noncombatants [being] killed in the various theaters of operations where U.S. forces have been active." This is how democracy ends. Landscapes of a War Culture As Michael Hardt and Antonio Negri emphasize in their book Multitude: War and Democracy in the Age of Empire, the veneration of war in the United States has now reached a dangerous endpoint and has become the foundation of politics itself. This is especially true as Americans entered into one of the most appalling and threatening periods of the 21st century. They write: War has passed from the final element of the sequences of power -- lethal force as a last resort -- to the first and primary element, the foundation of politics itself.... In order for war to occupy this fundamental social and political role, war must be able to accomplish a constituent or regulative function: war must become both a procedural activity and an ordering, regulative activity that creates and maintains social hierarchies, a form of biopower aimed at the promotion and regulation of social life. The violence produced by a war culture has become a defining feature of American society, providing a common ground for the deployment and celebration of violence abroad and at home. At a policy level, an arms industry fuels violence abroad while domestically, a toxic gun culture contributes to the endless maiming and deaths of individuals at home. Similarly, a militaristic foreign policy has its domestic counterpart in the growth of a carceral and punishing state used to enforce a hyped- up brand of domestic terrorism, especially against Black youth and various emerging protest movements in the US.The section on "End the War on Black People" in the "Vision for Black Lives: Policy Demands for Black Power, Freedom & Justice outlines this in detail. There can be little doubt that a racist repressive state apparatus will be expanded with Trump's choice of Jeff Sessions for attorney general. Sessions was once denied a federal judgeship in the 1980s on the grounds that he was a racist. He supports capital punishment and is poised to intensify the racist expansion of the criminal justice system. As John Kiriakou makes clear, quoting the nonprofit news organization, The Marshall Project: Things will likely change quickly under Sessions. The new attorney general "helped block broader drug sentencing reform in the Senate this year despite wide bipartisan support, saying it would release 'violent felons' into the street." He will also be tasked with carrying out the new president's policies on private prisons.... Just weeks before the election, Geo Group, the second largest private prison corporation in America, hired two former Sessions aides to lobby in favor of outsourcing federal corrections to private contractors. Since the Nixon era, a hyper-punitive political culture has served to legitimate a neoliberal culture in which cruelty is viewed as virtue, and to fuel the racist system of mass incarceration. As Angela Davis argues in Freedom Is a Constant Struggle, the persistent killing of Black youth testifies to a long history of domestic terrorism representing "an unbroken stream of racist violence, both official and extralegal, from slave patrols and the Ku Klux Klan to contem porary profiling practices and present-day vigilantes." The historical backdrop to the current killing of Black youth, men and women must be coupled with the shameful truth that "11 million Americans cycle through our jails and prisons each year." Rebecca Gordon points out that the United States is home to only 4 percent of the global population and yet it holds 22 percent of the world's prisoners. Moreover, 70 percent of these prisoners are people of color. These figures testify not only to the emergence of a police state, but also to a justice system that has a long legacy of being driven by racism. Under such circumstances, important distinctions between war and civil society collapse as the police function as soldiers, cities are transformed into combat zones, shared responsibilities are replaced by shared fears and public safety is defined increasingly as a police matter. Neoliberal society has ceded any vestige of democratic ideals to a social formation saturated with fear, suspicion and violence. The line has become blurred between real acts of violence and mythical appeals to violence as cleansing and restorative, as is evident in Trump's emotional appeal to his audiences' rage and fear. Dystopian violence is now legitimated at the highest level of politics, both in its use as a spectacle and as a policy of terror initiated most specifically in the murderous rampage of drone warfare. Politics is now an extension of the culture of war, and violence is a generative force in the production of everyday life. Normalizing Violence The normalization of violence in US society is not only about how it is lived and endured, but also about how it becomes the connective tissue for holding different modes of governance, policies, ideologies and practices together. All of these come to resemble military activities. And it is precisely such activities that serve to legitimate the war on terror, the use of mass surveillance, the weaponizing of knowledge and the merging of a war culture and warfare state. As Jonathan Simon has detailed in his book, Governing through Crime, in the aftermath of the transition from the welfare state in the 1960s to the current warfare state, the appeal to fear on many political fronts became paramount in order to legitimate a carceral state that increasingly governed through what can be termed the war on crime, especially affecting marginalized citizens. Violence, however grotesque, has been relegated to the most powerful force mediating human relations and used to address pressing social problems. Violence is a habitual response by the state in almost every dilemma. Police violence is only one register of the landscape of everyday violence. **The hidden structure of violence is not always on full display in the killing of Black people. It can also be found in a range of largely invisible sites of brutality that include debtor's prisons for children, racist juvenile courts, schools modeled after prisons, a systemic debt-machine and municipal governments that function as extortion factories and inflict misery and penury upon the poo**r. The registers of militarization produce armed knowledge through university research funded by the military-industrial-Pentagon complex. Meanwhile, a growing culture of political purity houses a discourse of "weaponized sensitivity and "armed ignorance." Empathy for others only extends as far as recognizing those who mirror the self. Politics has collapsed into the privatized orbits of a crude essentialism that disdains forms of public discourse in which boundaries collapse and the exercise of public deliberation is viewed as fundamental to a substantive democracy. This was made clear in Trump's repeated use of language in the service of violence at his pre-election rallies. Intolerable Violence in a Militarized Culture of Everyday Life Intolerable violence has become normalized. Uncritical support for a militarized culture now finds expression in a range of everyday events extending from the nightly news reports and the simulated violence of screen culture, to sports events. One often-overlooked egregious instance is evident in numerous military ceremonies that have become central to sports events, a number of which are paid for by the Pentagon. For example, Eyder Peralta, a reporter for NPR, pointed out that a recent Senate report indicates that in the past few years, "the Pentagon spent $6.8 million to pay for patriotic displays during the games of professional sports teams." Intolerable violence is also elevated to an everyday occurrence and legitimated in less evident ways through what Michael Schwalbe has called instances of "micro militarism which he defines as "pro-military practices squeezed into small cultural spaces." Such instances are low-key advertisements for militarism that, while largely unnoticed, saturate the culture with militaristic values that celebrate war as the primary organizing principle of society and a general condition of the social order. This is the small change of militarism. Think, for example, of the ATM receipts that post a "Support the Troops" message under the customer's bank balance. We encounter such messages when checkout clerks at gas stations and supermarkets ask for donations to "support our troops." Such messages function as military recruiting advertisements on the side of buses, cabs and billboards. Higher education institutions sponsor ads for graduate programs with pop-up images on their websites, such as "Advance Your Military Career with an MBA." As Schwalbe argues inherent in all of these messages is the idea that freedom and democracy are dependent upon the use of military force, state violence, and military service, the essence of which is "obedience, not courageous independence." These "small cultural spaces" -- when combined with various sites of militarism, ranging from public schools and sports events to popular cultural and policy-making institutions -- normalize war and violence. In this way, they make it more difficult for the American public to question the merging of war and politics and the pathologizing of politics by a culture of violence. One consequence is that democratic idealism is replaced by the ethos of militarism, and violence becomes the axiom by which everyday problems are both defined and mediated. Accordingly, the dominance of war-like values "expands from the margins of society to become a powerful process by which civil society ... organizes itself," and coincides with what Catherine Lutz describes as "the less visible deformation of human potentials into the hierarchies of race, class, gender, and sexuality." Trump's rhetoric in support of violence and discrimination threatens to further the transformation of the police into SWAT teams and the endless practice of arresting students for trivial behaviors in schools, subjecting Black people to fines for breaking rules that are petty and punitive and criminalizing Black people through policies of racial profiling that constitute practices of state harassment and violence. Aggressive policing is the underside of white supremacy because it is largely used in the service of whites against Blacks who have committed no crimes. And with racists, such as Jeff Sessions and Stephen Bannon holding top positions in the Trump administration, fantasies of America being transformed into a white public sphere will be at the center of politics. War culture is legitimated ideologically by collapsing public issues into private concerns. This is a powerful pedagogical tool that functions to depoliticize people by decoupling social problems from the violence inherent in the structural, affective and pedagogical dimensions of neoliberalism. Capitalism is about both winning at all costs and privileging what Zygmunt Bauman calls a "society of individual performance and a culture of sink-or-swim individualism." This mode of individualized politics functions as a weapon of fear that trades off conditions of precarity in order to amplify the personal anxieties, uncertainties and misery produced through life-draining austerity measures and the destruction of the bonds of sociality and solidarity. Abandoned to their own resources, individuals turn to what Jennifer Silva describes in her book Coming Up Short as a "mood economy" in which they "turn to emotional self-management and willful psychic transformation." At the same time, it redefines the pathologies of poverty, patriarchy, structural racism, police violence, homophobia and massive inequities in income and power as personal pathologies and shortcomings to be overcome by support groups, safe spaces and other reforms that sometimes ignore the need to fight for what Robin D. G. Kelley calls "models of social and economic justice." Toward a Comprehensive Politics **Any attempt to resist and restructure the intensification of a war culture with its white supremacist, ultra-nationalist underside in the US necessitates a new language for politics.** Such a discourse must be historical, relational and as comprehensive as it is radical. Historically, the call for a comprehensive view of oppression, violence and politics can be found in the connections that Martin Luther King, Jr. drew near the end of his life, particularly in his speech, "Beyond Vietnam: A Time to Break Silence King made it clear that the United States uses "massive doses of violence to solve its problems, to bring about the changes it wanted," and that such violence could not be clearly addressed if limited to an analysis of single issues, such as the Vietnam War. On the contrary, he argued that the war at home was an inextricable part of the war abroad and that matters of militarism, racism, poverty and materialism mutually informed each other and cut across a variety of sites. For instance, he understood that poverty at home could not be abstracted from the money allotted to wars abroad and a death-dealing militarism. Nor could the racism at home be removed from those "others" the United States demonized and objectified abroad, revealing in their mutual connection a racism that drove both domestic and foreign policy. For King, "giant triplets of racism, extreme materialism, and militarism" had to be resisted both through a revolution of values and a broad-based nonviolent movement at home aimed at a radical restructuring of American society. One ethical referent for King's notion of a radical restructuring was his moral and political abhorrence of the killing of millions of children -- at home and abroad -- by a war culture and its ruthless machineries of militarism and violence. Michelle Alexander has also argued that one thing we can learn from King is the need to connect the dots among diverse forms of oppression. A broader view of oppression allows us to see the underlying ideological and structural forces of the new forms of domination at work in the US. For instance, Alexander raises questions about the connection between "drones abroad and the War on Drugs at home." In addition, she argues for modes of political inquiry that connect a variety of oppressive practices enacted in order to accumulate capital -- such as the workings of a corrupt financial industry and Wall Street bankers, on the one hand, and the moving of jobs overseas, the foreclosing of homes, the increase in private prisons and the caging of immigrants, on the other. Similarly, Alexander calls for "connecting the dots between the NSA spying on millions of Americans, the labeling of mosques as 'terrorist organizations,' and the spy programs of the 1960s and 70s -- specifically the FBI and COINTELPRO programs that placed civil rights advocates under constant surveillance, infiltrated civil rights organizations and assassinated racial justice leaders." **More recently, we have seen the call for such connections emerge from the Black Lives Matter movement and a range of other grassroots movements whose politics go far beyond an agenda limited to single issues, such as the curbing of anti-Black violence.** This type of comprehensive politics is exemplified in the policy document, "A Vision for Black Lives: Policy Demands for Black Power, Freedom & Justice," created by the Movement for Black Lives, a coalition of over 60 organizations. Angela Davis has for years been calling for progressives to build links to other struggles and has talked about how what has happened in Ferguson must be related to what is happening in Palestine. This type of connective politics might raise questions about what the US immigration policies and the racist discourses that inform them have in common with what is going on in authoritarian countries, such as Hungary. Another example is illustrated when Davis asks what happens to communities when the police who are supposed to serve and protect them are treated like soldiers who are trained to shoot and kill? How might such analyses bring various struggles for social and economic justice together across national boundaries? In her book Freedom Is a Constant Struggle, Davis argues that such connections have to "be made in the context of struggles themselves. So as you are organizing against police crimes, against police racism you always raise parallels and similarities in other parts of the world [including] structural connections." Davis embraces what she calls the larger context, and this is clearly exemplified in her commentary about prisons. She writes: We can't only think about the prison as a place of punishment for those who have committed crimes. We have to think about the larger framework. That means asking: Why is there such a disproportionate number of Black people and people of color in prison? So we have to talk about racism. Abolishing the prison is about attempting to abolish racism. Why is there so much illiteracy? Why are so many prisoners illiterate? That means we have to attend to the educational system. Why is it that the three largest psychiatric institutions in the country are jails in New York, Chicago, Los Angeles: Rikers Island, Cook County Jail, and L.A. County Jail? That means we need to think about health care issues, and especially mental health care issues. We have to figure out how to abolish homelessness. We need a new political vocabulary for capturing the scope and interconnections that comprise the matrix of permanent war and violence that shape a variety of experiences and spheres in American society, all of which will expand under the Trump presidency. While the current focus on police killings, gun violence, mass shootings and acts of individual bloodshed are important to analyze, it is crucial not to treat these events as isolated categories. By doing so we lose a broader understanding of the ways in which American society is being held hostage to often invisible but formative modes of intolerable violence that are distributed across a range of sites on a daily basis. This is especially true as Americans enter into a historical moment in which the highest reaches of government will be run by a group of officials who support a president who has condoned torture, wants to increase the numbers of and power of the police, views Black neighborhoods as manifestations of a criminal culture, staffs his cabinet with racists, militarists and misogynists, and views violence as a legitimate tool for dealing with dissent. Noam Chomsky is right in calling Trump, his generals, and the Republican Party "the most dangerous organization in the world Intolerable violence is most visible when it attracts the attention of mainstream media and conforms to the production of what Brad Evans and I have discussed as the spectacle of violence, that is, violence that is put on public display in order to shock and entertain rather than inform. However, such violence is just the tip of the iceberg and is dependent upon a foundation of lawlessness that takes place through a range of experiences, representations and spaces that make up daily life across a variety of sites and public spaces. Those spaces of lawlessness are on the rise, and the ominous shadow of authoritarianism is at our doorstep. Nevertheless, such forces cannot be allowed to cancel out the future and promises of a radical democracy. Militant Hope and the Politics of Resistance **The first step in any form of collective resistance is to recognize the seriousness of the political, social and economic threat that a Trump administration poses to the United States' fragile democracy**. Secondly, while American society may be slipping away into the shadows of authoritarianism, it is imperative to think politics anew in order to wage more formidable struggles in the name of economic and social justice. **All societies contain sites of resistance, and progressives with structural power need desperately to join with those who have been written out of the script of democracy to rethink politics, find a new beginning and develop a vision that is on the side of justice and democracy**. Hope in the abstract is not enough. **We need a form of militant hope and practice that engages with the forces of authoritarianism on the educational and political fronts so as to become a foundation for what might be called hope in action** -- that is, a new force of collective resistance and a vehicle for anger transformed into collective struggle, a principle for making despair unconvincing and struggle possible. **Education must become central to any politics of resistance because it is fundamental to how subjectivities are produced, desire is constructed and behavior takes place. Paulo Freire, the Brazilian educator, was right in insisting that subjectivity is both the material of politics and the platform where the struggle over consciousness and resistance takes place. Antonio Gramsci, the great Italian Marxist, was right in arguing that at the heart of political struggle is a war of position, a struggle in which matters of education, persuasion, language and consciousness are fundamental to creating the formative culture that makes radical change possible.** This is a struggle in which inner worlds are made and remade not only under the weight of economic structures but also through the pedagogical mediums of belief, moments of recognition and identification. While we may be entering a period of counterrevolutionary change, it must be remembered that such historical moments are sometimes as hopeful as they are dangerous. **Hope at the moment resides in struggling to reclaim the radical imagination and bringing together an array of single-issue movements**, while working to build an expansive, broad-based social movement for both symbolic and structural change. **Central to such a task is the need to build alternative public spaces that offer fresh educational opportunities to create a new language for political struggle along with new modes of solidarity**. At stake here is the need for progressives to make education central to politics itself in order to disrupt the force of a predatory public pedagogy. We must disrupt the "common sense" that is produced in mainstream cultural apparatuses and that serves as glue for the rise of right-wing populism. This is not merely a call for a third political party. Any vision for this movement must reject the false notion that capitalism and democracy are synonymous. Democratic socialism is once again moving a generation of young people. We need to accelerate this movement for a radical democracy before it is too late.

### Strossen – Regulating Racist Speech on Campus

#### Speech is key to activism and protests – Civil Rights proves.

**Strossen 1:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Regulating Racist Speech on Campus: A Modest Proposal?” *Duke Law Journal*, 484-573, 1990. RP

It is particularly important to devise anti-racism strategies consis- tent with the first amendment because racial and other minority groups ultimately have far more to lose than to gain through a weakened free speech guarantee. **History has demonstrated that minorities have been among the chief beneficiaries of a vigorous free speech safeguard**.4°8 Professor Lawrence offers two rebuttals to the proposition that blacks are (on balance) benefited rather than hurt by a strong free speech guarantee. First, he notes that "[t]he first amendment coexisted with slavery."'4 9 It is undeniable that, until the Union won the Civil War, not only the first amendment, but also all of the Constitution's provisions guaranteeing liberty, coexisted with the total negation of liberty through the institution of slavery. **It also is true, however, that the free speech guarantees of the federal Constitution and some state constitutions allowed abolitionists to advocate the end of slavery**.410 Moreover, it must be recalled that until the 1930s, the first amendment provided no protec- tion whatsoever against speech or press restrictions enacted by state or local governments. 4 11 Further, although the first amendment from its adoption provided theoretical protection against actions by the national government, in practice it was not enforced judicially until the latter half of the 20th century. Not until 1965 did the Supreme Court initially exer- cise its power-which it had recognized 162 years earlier 4 2 -to invali- date unconstitutional congressional statutes in the first amendment context.413 Thus, under the Espionage Act of 1918 and similar state stat- utes, numerous individuals were punished for expressing unpopular political opinions. The first amendment did not prevent these laws from contributing to "the gravest period of political repression in American history." 4 14 In short, although slavery coexisted with the theoretical guarantees enunciated in the first amendment, slavery did not coexist with the judi- cially enforceable version of those guarantees that emerged only after World War I. We never can know how much more quickly and peace- fully the anti-slavery forces might have prevailed if free speech and press, as well as other rights, had been judicially protected against violations by all levels of government earlier in our history. That robust freedoms of speech and press ultimately might have threatened slavery is suggested by southern states' passage of laws limiting these freedoms, in an effort to undermine the abolitionist cause.415 The second basis for Professor Lawrence's lack of "faith in free speech as the most important vehicle for liberation" 41 6 is the notion that "equality [is] a precondition to free speech. '417 Professor Lawrence maintains that racism devalues the ideas of non-whites and of anti-racism in the marketplace ofideas.418 Like the economic market, the ideological market sometimes works to improve society,41 9 but not always.4 20 Odi- ous ideas, such as the idea of black inferiority, will not necessarily be driven from the marketplace. Therefore, the marketplace rationale alone might not justify free speech for racist thoughts.421 But that rationale does not stand alone. The civil libertarian and judicial defense of racist speech also is based on the knowledge that censors have stifled the voices of oppressed persons and groups far more often than those of their oppressors. Censorship traditionally has been the tool of people who seek to subordinate minorities, not those who seek to liberate them. As Profes- sor Kalven has shown, the civil rights movement of the 1960s depended upon free speech principles.4 23 These principles allowed protestors to carry their messages to audiences who found such messages highly offen- sive and threatening to their most deeply cherished views of themselves and their way of life. Equating civil rights activists with Communists, subversives, and criminals, government officials mounted inquisitions against the NAACP, seeking compulsory disclosure of its membership lists and endangering the members' jobs and lives.424 **Only strong principles of free speech and association could-and did-protect the drive for desegregation.** **Martin Luther King, Jr. wrote his historic letter from a Birmingham jail,426 but the Birmingham parade ordinance that King and other demonstrators had violated eventually was declared an unconstitu- tional invasion of their free speech rights**.427 Moreover, the Civil Rights Act of 1964, which these demonstrators championed, did become law.428 The more disruptive forms of protest, which Professor Lawrence credits with having been more effective 29-such as marches, sit-ins, and kneel-ins-were especially dependent on generous judicial constructions of the free speech guarantee.4 30 Notably, many of these protective inter- pretations initially had been formulated in cases brought on behalf of anti-civil rights demonstrators. **Similarly, the insulting and often racist language that more militant black activists hurled at police officers and other government officials also was protected under the same principles and precedents.**431 The foregoing history does not prove conclusively that free speech is an essential precondition for equality, as some respected political philoso- phers have argued.4 32 But it does belie Professor Lawrence's theory that equality is an essential precondition for free speech.433 **Moreover, this** history demonstrates the symbiotic interrelationship between free speech and equality, **which parallels the relationship between civil liberties and civil rights more generally.**434 Both sets of aims must be pursued simul- taneously because the pursuit of each aids the realization of the other. The mutual interdependence of equality and liberty was forcefully de- scribed by Professor Karst: [T]he constitutional values of equality and liberty are fundamentally linked by the notion that equal access to certain institutions and serv- ices is a prime component of any meaningful liberty. ,This link is re- flected in the language of egalitarian movements. The civil rights movement of the 1960s, for example, marched under the banner of "Freedom" even though its chief objective was equal access-to the vote, to education, to housing, even to lunch counters. "Liberation" is today a theme of more than rhetorical significance in egalitarian causes such as the women's movement.435

### Rauch

#### Even anti-queer bigotry shouldn’t be suppressed – open dialogue about gay rights empirically does change minds.

**Rauch:** Rauch, Jonathan [Contributors, The Atlantic] “The Case for Hate Speech.” *The Atlantic.* November 2013. RP

ENDER’S GAME COMES OUT November 1. If you live in a cave, you may not be aware that this likely blockbuster is based on a classic 1985 sci-fi novel by Orson Scott Card. The movie version features Harrison Ford, copious digital effects, and a boycott. Recently, a group of gay activists launched a Web site urging anyone who cares about same-sex marriage or gay equality to stay out of theaters. “By pledging to Skip Ender’s Game,” the group said, “we can send a clear and serious message to Card and those that do business with his brand of anti-gay activism—whatever he’s selling, we’re not buying.” **I have been advocating gay marriage and gay equality for more than 20 years, fighting many of the same stereotypes and slurs that have figured in Orson Scott Card’s nonfiction writing. So I understand why some equality advocates want to make a statement against Card. What I would like them to understand is why I hope they fail. In a roundabout but important way, bigoted ideas and hateful speech play an essential part in advancing minority rights. Even if we have every right to boycott Ender’s Game, gays are better served by answering people like Card than by trying to squelch or punish them**. Lately, people have been asking me why so much has happened in America, seemingly so suddenly, to advance gay equality generally and gay marriage specifically. It’s a good question, with some obvious answers. Demographics are one: younger people who are more relaxed about homosexuality are replacing older people who harbor long-standing prejudices. Also, as more gay people come out of the closet and live and love openly, we are no longer an alien presence, a sinister underground, a threat to children; we are the family down the block. Those are important factors. But they don’t tell the whole story. **Generational replacement doesn’t explain why people in all age groups, even the elderly, have grown more gay-friendly.** Gay people have been coming out for years, but that has been a gradual process, while recent changes in public attitude have been dizzyingly fast. **Something else, I believe, was decisive: we won in the realm of ideas**. And our antagonists—people who spouted speech we believed was deeply offensive, from Anita Bryant to Jerry Falwell to, yes, Orson Scott Card—helped us win. In 2004, when I was making the talk-show rounds for my new book on gay marriage, **I found myself on a Seattle radio station, debating a prominent gay- marriage opponent. After she made her case and I made mine, a caller rang in to complain to the host. “Your guest,” he said, meaning me, “is the most dangerous man in America.” Why? “Because,” said the caller, “he sounds so reasonable.”** In hindsight, this may be the greatest compliment I have ever been paid. It is certainly among the most sincere. **Despite the caller’s best efforts to shut out what I was saying, the debate he was hearing—and the contrast between me and my adversary—was working on him. I doubt he changed his mind that day, but I could tell he was thinking, almost against his will**. Hannah Arendt once wrote, “**Truth carries within itself an element of coercion.” The caller felt that he was in some sense being forced to see merit in what I was saying.**

#### Progress for gay rights occurs through arguments – people will be convinced.

**Rauch:** Rauch, Jonathan [Contributors, The Atlantic] “The Case for Hate Speech.” *The Atlantic.* November 2013. RP

**A generation ago, the main obstacle to gay equality was not hatred, though of course there was a good deal of that. Most people who supported the repressive status quo meant well. The bigger problem, rather, was that people had wrong ideas about homosexuality**: factual misapprehensions and moral misjudgments born of ignorance, superstition, taboo, disgust. If people think you are a threat to their children or their family, they are going to fear and hate you. Gays’ most urgent need was epistemological, not political**. We had to replace bad ideas with good ones.** Our great blessing was to live in a society that understands where knowledge comes from: not from political authority or personal revelation, but from a public process of open-ended debate and discussion, in which every day millions of people venture and test billions of hypotheses. All but a few of those theories are found wanting, but some survive and flourish over time, and those comprise our knowledge. The restless process of trial and error does not allow human knowledge to be complete or perfect, but it does allow for steady improvement. If a society is open to robust critical debate, you can look at a tape of its moral and intellectual development over time and know which way it is running: usually toward less social violence, more social participation, and a wider circle of dignity and toleration. And if you see a society that is stuck and not making that kind of progress, you can guess that its intellectual system is not very liberal. **The critical factor in the elimination of error is not individuals’ commitment to the truth as they see it (if anything, most people are too confident they’re right); it is society’s commitment to the protection of criticism, however misguided, upsetting, or ungodly. America’s transformation on gay rights over the past few years is a triumph of the open society. Not long ago, gays were pariahs. We had no real political power, only the force of our arguments. But in a society where free exchange is the rule, that was enough. We had the coercive power of truth. History shows that the more open the intellectual environment, the better minorities will do. We learn empirically that women are as intelligent** and capable as men; this knowledge strengthens the moral claims of gender equality. We learn from social experience that laws permitting religious pluralism make societies more governable; this knowledge strengthens the moral claims of religious liberty. We learn from critical argument that the notion that some races are fit to be enslaved by others is impossible to defend without recourse to hypocrisy and mendacity; this knowledge strengthens the moral claims of inherent human dignity. To make social learning possible, we need to criticize our adversaries, of course. But no less do we need them to criticize us. All of which brings me back to Orson Scott Card. Some of the things he has said are execrable. He wrote in 2004 that when gay marriage is allowed, “society will bend all its efforts to seize upon any hint of homosexuality in our young people and encourage it.” That was not quite a flat reiteration of the ancient lie that homosexuals seduce and recruit children—the homophobic equivalent of the anti-Semitic blood libel—but it is about as close as anyone dares to come today. Fortunately, Card’s claim is false. Better still, it is preposterous. Most fair- minded people who read his screeds will see that they are not proper arguments at all, but merely ill-tempered reflexes. When Card puts his stuff out there, he makes us look good by comparison. The more he talks, and the more we talk, the better we sound.

#### Censorship backfires by painting *minorities* as the intolerant ones.

**Rauch:** Rauch, Jonathan [Contributors, The Atlantic] “The Case for Hate Speech.” *The Atlantic.* November 2013. RP

**I can think of quite a few reasons why boycotting Ender’s Game is a bad idea. It looks like intimidation, which plays into the right’s “gay bullies” narrative, in which intolerant homosexuals are purportedly driving conservatives from the public square**. It would have little or no effect on Card while punishing the many other people who worked on the movie, most of whom, Hollywood being Hollywood, probably are not anti-gay (and many of whom almost certainly are gay). **It would undercut the real raison d’être of the gay-rights movement: not to win equality just for gay Americans but to advance the freedom of all Americans to live as who they really are and say what they really think.** Even if they are Orson Scott Card. Above all, the boycott should fizzle, and I expect it will fizzle, because gay people know we owe our progress to freedom of speech and freedom of thought. **The best society for minorities is not the society that protects minorities from speech but the one that protects speech from minorities (and from majorities, too).** Gay Americans can do the cause of equality more good by rejecting this boycott than by supporting it. I’ll see the movie—if the reviews are good.

### Ream

#### The assault on campus free speech spills over – it threatens core democratic values, and causes violence on campus – Berkeley proves.

**Ream:** Ream, Roger R. [Roger R. Ream is the president of The Fund for American Studies.] “Why the Assault on Campus Free Speech Threatens Our Republic.” *The Daily Signal.* February 2017. RP

**It’s no secret that free speech is increasingly under threat on U.S. college campuses**. A number of University of Chicago activist groups, including U of C Resist and UChicago Socialists, demanded that the university rescind its o er for Corey Lewandowski to speak on campus. In a letter sent to campus o icials, students felt that any dialogue with the former Trump campaign manager would “normalize bigotry” and that “nothing about a firm commitment to free speeches obliges us to open our doors to those who incite hatred.” **Couple this with violent protests at the University of California, Berkeley, where protesters and masked agitators tore through the campus smashing windows, hurling Molotov cocktails, and attacking bystanders to disrupt a conservative speaker’s planned event, and you can see a growing problem: Campuses are becoming anti-free speech zones. A peaceful protest descending into chaotic anarchy is by no means a new phenomenon, and college students exercising their right to protest is arguably just as commonplace.** The history of higher education in America is full of instances where students exercised their right to free speech and assembly, o en at great personal risk, to bring awareness and change. Some of the protests have been peaceful, while others devolved into violence and destruction. Many of these protests were held for important and heroic causes, and perhaps some causes that were not as worthy. However, the rhetoric of these young activists—whether they engaged in the violence and destruction or not—is new in the sense that it reflects a larger and rapidly growing anti- free speech movement. These protesters were demanding not only that their voices be heard, but also that the opposing viewpoint be completely suppressed. This misinterpretation of one of our country’s fundamental rights reveals the importance of teaching the next generation why free speech matters. **People used to stand up for free speech**. They used to fight for our unabridged right to express opinions without fear of censorship or violent retribution. They used to live by the old adage, “I don’t agree with what you say but I will defend to the death your right to say it.” Times have definitely changed. Free speech is under attack, and ground zero appears to be our university and college campuses. Across the nation, colleges have compromised their fundamental mission and given in to safe space activism and P.C. culture. Students have become significantly less tolerant of dissenting viewpoints. University of California, Los Angeles students created a “healing space” in order to recover from a speech they did not even attend. At educational events, I have witnessed increasing levels of pushback when speakers express views that challenge the prevailing campus orthodoxy. Even more telling, students take o ense when speakers voice strong opinions on sensitive subjects. For example, my organization, the Fund for American Studies, hosted renowned journalist George Will as a speaker this past summer. In response to a question about political correctness and trigger warnings, Will said that students should be willing to be confronted with ideas that make them uncomfortable. To defend this point, Will used Mark Twain’s satire of slave and Southern culture “Adventures of Huckleberry Finn,” arguing that despite the appearance of the “n” word more than 225 times, it is still one of the greatest American novels and should be read. Twain, a man vehemently opposed to slavery in his personal life, used satire to tear down entrenched social and political norms that were wrong. Still, many students reacted with utter shock to Will’s point, with some calling his remarks o ensive. None of this negates the importance of listening to the next generation. Student voices are powerful, and student activists can be e ective agents for change and progress. But it is equally important that our schools encourage students to be critical thinkers who are able to consider many di erent arguments and to form intelligent conclusions about the strengths and weakness of the alternatives. More than two centuries a er freedom of speech was enshrined in the First Amendment, it remains inseparable from the mission of higher education. **Every great university in the world should have a deep commitment to free expression. One of the cornerstones of education is engaging with the unfamiliar and exploring di erent viewpoints. We must reject this new anti-free speech movement for what it is: a dangerous withdrawal from academic discourse, and a threat to American democracy.**

### Goldberg

#### Speech codes give the government arbitrary power to decide what is and isn’t offensive – it’s epistemically suspect. [answer to phil NCs]

**Goldberg:** Goldberg, Erica [Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 2016).] “FREE SPEECH CONSEQUENTIALISM.” *Columbia Law Review.* Volume 116. 2016. RP

By now, it has become a veritable cliché that the solution for harms that flow from speech is more speech. And while this cliché is often true, many scholars believe that the marketplace of ideas does not correct errors well. **However, there is little indication that lawmakers are better equipped to perceive and correct the harms caused by speech** (thus allowing greater scrutiny by the courts than with conduct harms). **Even Brian Leiter, who doubts the specialness of most speech, acknowledges that the alternative—letting the government decide when speech harms are too great—raises the problem of the epistemic arbiter.** The government may be no more capable of sorting out harmful speech from helpful speech, and mitigating the harms of speech, than individuals are. **Governmental regulation of the expressive elements of speech renders speech vulnerable to censorship based on impermissible governmental motives, like viewpoint discrimination or arbitrary and subjective understandings of harm, and creates more difficult line- drawing problems.**

#### Speech codes aren’t a pragmatic strategy – they construct speech as static when in fact it’s always changing [A2 pragmatism/deleuze????]

**Goldberg:** Goldberg, Erica [Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 2016).] “FREE SPEECH CONSEQUENTIALISM.” *Columbia Law Review.* Volume 116. 2016. RP

**State intervention to remedy speech harms is also problematic because the question of whether a particular instance of speech causes harm changes with time, and with society’s perception of that speech. Because speech is highly context dependent, the harm caused by speech is more malleable than the harm caused by conduct. Indeed, outlawing speech as being harmful often compounds the sense of harm listeners feel from the speech**; this phenomenon argues in favor of the strong-listener model. It is far more difficult, and often counterproductive, to weigh the harms caused by speech and balance them against speech’s virtues.

#### Restricting speech is a contradiction because the restriction itself uses speech! [This arg is so stupid but it could answer deont]

**Goldberg:** Goldberg, Erica [Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 2016).] “FREE SPEECH CONSEQUENTIALISM.” *Columbia Law Review.* Volume 116. 2016. RP

More critically, **the very harms that flow from speech are intertwined with the way we resist speech-based harms.** The malleability of speech harms and the diffuse nature of those responsible for speech harms allow speech to serve unique and important functions in society. **Speech plays a special role in catalyzing action and change through diffuse parties without itself manifesting change. Speech is how we convince people that the harms that flow from speech are harmful, and also how we change others’ (and our own) perception of what is harm and what it means to be harmed**. Speech is one of the few ways society evolves in its consideration of what constitutes harm.

#### Restricting speech violates autonomy by holding people responsible for unintended perceptions of speech

**Goldberg:** Goldberg, Erica [Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 2016).] “FREE SPEECH CONSEQUENTIALISM.” *Columbia Law Review.* Volume 116. 2016. RP

3. Autonomy and Responsibility. — Distinguishing speech harms from conduct harms also promotes the view that adults generally have the capacity to lead autonomous lives and, absent extraordinary influences, they in fact do so. **Autonomy, or at least autonomy in the “negative” sense that would prevent governmental suppression of speech**, requires the normative conception of people as largely capable of resisting coercion, emotional manipulation, or temporary distortion of judgment that stem just from speech. A social climate that accepts individuals as autonomous in this way is more likely to both assign them responsibility for their actions and allow them agency to make voluntary decisions. A climate in which harms that flow from speech are regulable denies agency in ways that regulating conduct harms does not, because it presumes that others can overtake the sphere of our own minds, and it absolves us of responsibility for managing our emotions. This climate has negative implications for our abilities to consent to voluntary arrangements and also undermines ideas of legal culpability in both tort and criminal law. **In a pro-agency, pro-autonomy world, it is unfair and unnecessarily restrictive to hold a speaker responsible for acts neither intended by nor condoned by the speaker, because speech harms are often caused by diffuse parties or intermediaries. Speech has unique characteristics that create important reasons not to place blame on the speaker for harm that arises.** Tort law, which already contains sophisticated frame works for conceptualizing blame and responsibility, provides a useful concept: proximate cause. Tort law requires that a defendant be both a but-for cause and a proximate cause (or culpable party) in order to impose liability. **This sense of culpability is often based on what is reasonably foreseeable, in a normative sense, and contingent upon the foreseeability of the actions of other parties who contribute to the harm. Foreseeability concepts break down in the face of speech harms. When the harm caused by speech is context dependent, it is more diffi cult to foresee the harm it will cause, as that harm changes over time and in different contexts. And, conversely, it is usually predictable that some one, even a reasonable person, may be bothered by certain speech, even if simply because he objects to the speech**. Instead of blaming the speaker, when the harm caused by speech is largely emotional in nature, the listener should be deemed responsible for managing his own emo tional response and thus mitigating the harm caused. When the harm is per petuated by diffuse agents, for example in a context of reputational harm where the harm is created when each new audience member is exposed to the speech, there are intervening causal forces that militate against holding the speaker liable except in cases of malicious falsity. **Diffusion also happens when harm is perpetuated in a way wholly separate from the speaker’s harm, for example when a viewer of a violent movie copies an act committed in that movie.** Analogizing speech harms to conduct harms would preserve the specialness of speech and its important benefits to society. Regulating speech because it agitates others through diffuse processes, or because it causes emotional upset to a listener, necessarily undermines the reason that speech is special—because of its ability to impact others in an attenuated way, through the cognitive or emotional processes of a listener or through diffuse parties ruminating upon the speech, without causing specific or tangible harms. However, when speech begins to resemble conduct, such as when it impairs discrete, material interests through direct processes and through the fault mostly of the speaker, then courts should consider those conduct-like harms in their consequentialist calculus.

### White

#### Legal experts and SCOTUS agree that exceptions to the First Amendment undermine the doctrine and are *infinitely modeled*– the PIC doesn’t solve the case

**White:** White, Ken [Blogs about the law, liberty, and more at Popehat] “Lawsplainer: Why Flag Burning Matters, And How It Relates To Crush Videos.” *Popehat.* November 2016. RP

**In free speech analysis, how you get to a conclusion often has much more long-lasting impact than the conclusion itself. Our legal system runs on precedent. The significance of the precedent isn't "the Supreme Court said that flag burning is protected by the First Amendment**." The significance of the precedent is "someone wants to punish this speech and we have to figure out whether or not it's protected by the First Amendment. Let's look at the logic and methods the Supreme Court used to resolve that question when flag burning was the issue, and then apply it here." But the Supreme Court has decided lots of cases about the First Amendment. This is just one precedent, one example of a method of reaching a conclusion. What makes it particularly important? **The Supreme Court's flag burning cases are crucial — not because of how they analyze existing exceptions to the First Amendment, but because they address whether the government can create endless exceptions to the First Amendment. Just like crush videos.**wat Crush videos. You know, videos of women stomping on small helpless animals. That's . . . that's a thing? Of course it's a thing. Ugh. What does that have to do with flag burning? Or the First Amendment? Congress — having salved all of the nation's ills — passed a law banning crush videos. Because who wouldn't vote for someone who stands against hurting baby animals? The law made it a federal crime to create or sell depictions of animal cruelty in interstate commerce. In 2010, in United States v. Stevens,, the Supreme Court found that the statute violated the First Amendment. That sounds pretty straightforward. Why is it significant? It's significant because of the way the government defended the statute. **The government's lead argument wasn't that crush videos were outside of First Amendment protection because they fell into an already-recognized exception, like defamation or obscenity or incitement. They argued that the Supreme Court should recognize a new categorical exception** to First Amendment protection for animal cruelty, because animal cruelty is so awful. They also argued that courts can recognize new exceptions to the First Amendment by weighing the "value" of the targeted speech against the harm it threatens. **The Supreme Court — in an 8 to 1 decision — firmly rejected those two arguments. First, the Court said, the historically recognized exceptions to First Amendment protection are well-established, and you can't just go around adding new ones: From 1791 to the present,” however, the First Amendment has “permitted restrictions upon the content of speech in a few limited areas,” and has never “include[d] a freedom to disregard these traditional limitations.”** Id., at 382– 383. These “historic and traditional categories long familiar to the bar,” Simon & Schuster, Inc. v. Members of N. Y. State Crime Victims Bd. , 502 U. S. 105, 127 (1991) ( Kennedy, J. , concurring in judgment)—including obscenity, Roth v. United States , 354 U. S. 476, 483 (1957) , defamation, Beauharnais v. Illinois , 343 U. S. 250, 254–255 (1952) , fraud, Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc. , 425 U. S. 748, 771 (1976) , incitement, Brandenburg v. Ohio , 395 U. S. 444, 447–449 (1969) ( per curiam ), and speech integral to criminal conduct, Giboney v. Empire Storage & Ice Co. , 336 U. S. 490, 498 (1949) —are “well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem.” Chaplinsky v. New Hampshire , 315 U. S. 568, 571– 572 (1942) . Second, the Court said, **the government's proposed methodology — that the Court should identify new categorical exceptions by balancing, on a case-by-case basis, the value of speech against its harm — is antithetical to First Amendment analysis and dangerous**: “ The Government thus proposes that a claim of categorical exclusion should be considered under a simple balancing test: “Whether a given category of speech enjoys First Amendment protection depends upon a categorical balancing of the value of the speech against its societal costs.” Brief for United States 8; see also id., at 12. As a free-floating test for First Amendment coverage, that sentence is startling and dangerous. The First Amendment ’s guarantee of free speech does not extend only to categories of speech that survive an ad hoc balancing of relative social costs and benefits. The First Amendment itself reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs. **Our Constitution forecloses any attempt to revise that judgment simply on the basis that some speech is not worth it**. The Constitution is not a document “prescribing limits, and declaring that those limits may be passed at pleasure.” Marbury v. Madison , 1 Cranch 137, 178 (1803). **So: in 2010, the Supreme Court overwhelmingly and clearly rejected the idea that legislatures and courts can create new exceptions to the First Amendment based on how strongly they hate speech or how awful it is.**

#### The principle of free speech comes first – allowing arbitrary carve outs expands government power

**White:** White, Ken [Blogs about the law, liberty, and more at Popehat] “Lawsplainer: Why Flag Burning Matters, And How It Relates To Crush Videos.” *Popehat.* November 2016. RP

**The flag-burning cases are important, like the crush videos case was important, because they draw a crucial line between having a few strictly limited exceptions to the First Amendment, on the one hand, and having as many exceptions as we feel like having, on the other hand. Flag burning isn't speech that's uniquely valuable or important to protect. What's important is that we protect the principled method by which we determine which speech is protected and which isn't. The argument that flag burning should be outside the First Amendment can be applied with equal force to just about anything — "hate speech," "cyber-bulling," "revenge porn," "pro-ISIS speech," or whatever the flavor of the month is. If think the majority was wrong in the flag burning cases, here's what you're saying: "the Supreme Court makes bad judgments, and I [you] want to give that Supreme Court the power to decide, on a case-by-case basis, whether the harm of speech outweighs its value. I don't want the courts to be limited to established, well-defined categories outside of First Amendment protection." But that's ridiculous. You're damn right it is. It's about nothing less than the rule of law.**

### Robertson

#### Empirics confirm revenge porn statutes are overly vague, and make anonymous circumvention all too easy

**Robertson:** Robertson, Hope [Guest Contributor, Campbell Law Observer] “The Criminalization of Revenge Porn.” *Campbell Law Review.* July 2015. RP

**As of July 16, 2015, twenty four states have laws addressing criminal charges against Revenge Porn posters and website hosts. Some are broader than others, and most leave gaping holes for technicalities.** The current statutes vary on what categories legislators decided to categorize them under—everything from harassment and stalking to voyeurism and invasion of privacy. **Also, the anonymity allowed to those who post on these websites makes it almost impossible to prosecute, and website hosts are often hard to find**. Additionally, hosting a simple website that is mostly user-run makes it almost impossible to find any civil liability to impose on the website hosts. Website URL hosts have been cleared of any civil liability under protection of § 230 of the Communications Decency Act. Currently, all civil or criminal charges brought against defendants for Revenge Porn practices have been because they are engaged in other illegal activity, like soliciting photos and money under false pretenses. With the advancement of the Internet and continued heightened sexualization of younger generations, Revenge Porn will never go away. However, just like any other crime, making the act illegal will hopefully deter both the posters and the website hosts. Some will start to balance the satisfaction gained from posting the photos against criminal punishment and a criminal record, and decide posting these photos is not worth it. Unlike consensual pornography, the only goal of posting Revenge Porn is to humiliate and harass the subject. It is the cyber equivalent of sexual harassment and stalking, which are already illegal. Photos on the Internet never go away; thus focusing efforts towards liability only after photos are posted should not be the ultimate goal. Legislation should work towards deterring people from posting the photos and hosting these websites in the first place. Criminal codes across the nation should catch up with technology and culture by criminalizing Revenge Porn practices of both those who create the websites and those who post on the websites. To find the most favorable Revenge Porn criminalization statute, this article will analyze the revenge porn statutes in place in Maryland, California, and Virginia. Maryland was one of the earliest revenge porn statutes to be codified and is one that categorized Revenge Porn under their harassment and stalking laws, which is the category where Revenge Porn fits best. California had the first criminal conviction of a Revenge Porn website host under its Revenge Porn statute. Virginia’s statute has effectively charged people for posting revenge porn, and might show to be very effective addressing that issue. This article will then address the main issue with Revenge Porn criminalization statutes: free speech and the first amendment. Finally, this article will analyze other routes of recovery for victims including federal charges, state tort law, and copyright law, and how they are not enough to solve the ultimate issues. Maryland was one of the first states to have an official “Revenge Porn” law enacted it its criminal code. It is included with other laws under the heading of “Stalking and Harassment.” Although the law criminalizes uploading revenge porn by an individual who knowingly did not receive consent to publish the video, the law specifically excludes “interactive computer services” from liability. Under 47 U.S.C. § 230(f)(2), the term “interactive computer service” is defined as “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.” This means that providers like Google Chrome, Safari, and Internet Explorer are not liable for websites that can be accessed on their servers. The Maryland statute aims to punish those who post Revenge Porn by criminalizing the act of posting photos (that fit the definition) with the intent to cause severe emotional distress, knowing that the victim of the photo did not consent, and the victim would subjectively believe the images would be kept private. This statute covers a substantial amount of Revenge Porn incidents. The only purpose of posting on a Revenge Porn website is to intentionally cause emotional distress to the victim because they are posting photos that the victim assumed would be kept private and doing so without their consent. This statute on its face seems like a sufficient way to solve the problem—criminalize the activity of posting the photos thus deter people from doing it. However, the Maryland statute has a few problems. **First, Maryland’s statute does not address or criminalize the production of the website itself. It does not go for the root of the problem**, but merely the aftermath of posting the photos. The statute should also ideally include the criminalization of producing websites solely for the purpose of Revenge Porn. **However, some believe that just like “interactive computer services,” the website itself can assert federal immunity under § 230 of the federal Communications Decency Act.** The court has yet to answer this question, however, because sites are being taken down for other reasons besides being a Revenge Porn site. **Some believe that because the website owner is only setting up the website, that they are not participating in the creation of Revenge Porn**, and that they are only providing the space for their users to do whatever they want. The users and posters are the ones deciding to post the pictures, comments, and descriptions, while the website creator just pays for the URL. If users did not want to post Revenge Porn, they do not have to, and can choose to not use the site as it is intended. However, in a Google search for “myex.com,” the title of the link states: “MyEx.com Get Revenge! Naked Pics of Your Ex.” That tag was specifically created by the owner and creator of the website clearly advertising what the website is for, how it is supposed to be used, and what can be found on it. Allowing website creators to hide under this exception is nonsensical and dangerous. The owner might not be creating the Revenge Porn, but they are providing the means thus they are the equivalent to an accessory to a crime. Therefore, the Maryland statute should include a revision that punishes the creator as well as the users. However, there could be an issue with finding the creator to impose liability, although this could be remedy after the fact via IP address tracking. **Another problem with the statute is it is largely ineffective for websites like myex.com and others that allow the poster to remain anonymous. The content might be there, and all of the elements might be fulfilled, but a majority of websites dedicated to hosting Revenge Porn hide the user’s name and any identifying factors**. Unfortunately, too often the automatic response to this problem is assuming the victims should know who they send what photos to, putting the responsibility and blame back on them instead of requiring the websites to keep track of who posts on their sites. Even if that were the case and victims knew who had those specific pictures, it does not always solve the problem. As soon as the original pictures are posted, the pictures have already been on the Internet long enough for other people to download them or screenshot them. A visitor to myex.com might see pictures of someone they know, not necessarily someone he has had a sexual relationship with, and copy those pictures to post to a different site. This same scenario often happens when websites are taken down or victims request pictures be removed under DMCA. Again, the issues come from the pictures being posted in the first place and what happens after.

#### Revenge porn isn’t constitutionally protected – it isn’t even considered free speech

**Robertson:** Robertson, Hope [Guest Contributor, Campbell Law Observer] “The Criminalization of Revenge Porn.” *Campbell Law Review.* July 2015. RP

**Laws prohibiting Revenge Porn fall under the time, place, and manner exception to the First Amendment and do not violate free speech**. The posting of nude photos and the writing surrounding the content are two different free speech analyses**. The photos are not protected under the First Amendment, while the writing surrounding the photos (usually) is protected. The posting of photos on a website is not pure speech; it is conduct.** The United States Supreme Court has stated that there is not a “limitless variety of conduct [that] can be labeled ‘speech’ whenever the person engaging in the conduct intends thereby to express an idea.” **Therefore, the court must analyze whether the conduct is expressive. To be expressive conduct, the speaker must intend to communicate something**, and the audience must understand the message the speaker is intending to communicate. In this case, the speaker is intending to communicate certain things about his/her ex by posting these photos (the ex wronged the speaker in some way to make the speaker want revenge) and the audience understands this is the message the speaker is intending to send. **This makes the posting of photos qualify as expressive conduct, and the “Court has held that when ‘speech’ and ‘nonspeech’ (conduct) elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment Freedoms.”**

### Elavia

#### Alumni love free speech – Yale proves that hundreds will cut back on donations ABSENT free speech.

**Elavia:** Elavia, Serena [Contributor, Fox Business] “Yale’s Alumni Donations May Suffer Amid Free Speech Debate.” *Fox Business.* November 2015. RP

**In light of the recent campus protests at Yale University in New Haven, CT, many in the alumni community are upset with the current campus climate and are threatening to cease donations if the University censors free speech**. This Ivy League institution has become the center of a free speech debate a er two conflicting emails were sent out to students about Halloween costumes. The first email, sent to the campus by the Intercultural A airs Committee, which seeks to promote an inclusive and diverse campus, requested that students avoid wearing “culturally unaware or insensitive” Halloween costumes, including Native American dress, redface and blackface. In response, faculty member Erika Christakis, sent an email saying students should be free to wear whichever costumes they choose. Both were cited by the Foundation for Individual Rights in Education (FIRE). A er the second email, many students felt that Christakis had created an unsafe space on campus according to reports. Since then, students have held a 1,000 person protest, submitted demands to the University and even shouted down Christakis’ husband, who is also a Yale faculty member. That account was captured on YouTube (GOOG). According to the Yale Daily News, the student newspaper, students have skipped classes and midterm exams, or requested extensions citing emotional distress as rendering them unable to fulfill academic obligations. Now, hundreds of alumni are frustrated with how Yale has handled the crisis. For many, they’ve threatened to withhold future donations if the administration favors protesting students. Michael Knowles, a 2012 alum, started a Fundly campaign called Concerned Yale Alumni that is raising money to send copies of free speech books to Yale President Peter Salovey, faculty and students. **“The implicit message of this campaign is that alumni will not be sending a penny to Yale University until they make very clear their unconditional commitment to the exchange of free ideas,” says Knowles who says he has spoken to hundreds of alumni. While the campaign to date only has 17 public donors raising $1,118, Knowles says he has received private checks from alumni totaling several thousand dollars who did not want their names publicly displayed on the campaign**. A 2011 Yale alum who spoke to FOXBusiness.com on the condition of anonymity says that “North of 90% of alumni that I talk to would not donate to Yale currently.” And Yale’s o icial fundraising e orts may also take a hit. Ahead of the 132nd Harvard versus Yale football game on Saturday November 21, a sporting rivalry steeped in tradition between the two institutions, Yale has called o its fi h annual fundraiser, according to sources connected to the campaign and alumni. Historically, the fundraiser runs for ten days leading up to the game and challenges Harvard and Yale alumni to compete for who can raise the most money. According to the fundraiser’s page, Yale has seen upwards of thousands of donors participating in the challenge with 3,870 in 2014, 3,999 in 2013, and 1,010 in 2012. “This could not have come at a less opportune time for Yale fundraising,” says Knowles. Multiple calls and emails for comment to Yale’s O ice of Public A airs regarding both the football fundraiser and the impact on alumni donations were not returned to FOXBusiness.com. Nor was an email to Yale President Peter Salovey. One alumnus who will continue to donate is Stephen Schwarzman, class of 1969, and the founder and CEO of investment bank Blackstone (BX) who gave a landmark $150 million gi to Yale in May 2015. In a statement to FOXBusiness.com, he said: “The gi is intended to bring the Yale community together and the need is more important than ever.” Another one of Yale’s biggest donors, Charles Bartlett Johnson, class of 1954, and a former chairman of the mutual fund company Franklin Resources (BEN) gi ed a $250 million donation to Yale in September 2013. At the time of publication, Johnson had not returned a request for comment to FOXBusiness.com on whether or not he will continue to donate to the University. On Thursday November 12, a group of Yale students referring to themselves as the “Next Yale” submitted a list of demands to President Salovey with a deadline of November 18. Salovey told the Yale Daily News that the administration will “seriously” review the demands and provide a response this week.

### Falkvinge

#### Hate speech is an important safety valve that staves off actual violence

**Falkvinge:** Falkvinge, Rick [Contributor, Falkvinge on Liberty] “Acknowledging The Important Value Of Hate Speech.” October 2013. RP

**Hate speech is an important safety valve before hate violence. If you prevent hate speech, people inclined to hatred will go directly from hate thought to the third step, which is hate violence.** You want to prevent that. **Somebody who carries resentment can not be detected at the hate thought stage – the hate speech stage is the first stage detectable to society, which is why you want this, you want to see as much of it as possible.** This is when somebody can be addressed by the community through informal and formal means – **why are they full of hatred? Are they feeling well? Are they just stupid bigots, and if so, can & they be talked out of it? Or have they possibly pinpointed a very real injustice in society?** (Don’t neglect that last possibility.) **In all three cases, you want this hate speech to appear, so that the problem can be peacefully addressed. If it is not allowed to appear, it will proceed to the next stage, which is hate violence. Banning hate speech does not get rid of the underlying problem. It does, however, destroy the crucial safety valve in society before violence appears.**

### Burrus

#### Speech codes make hate into a “forbidden fruit”, increasing the prevalence of racial slurs

**Burrus:** Burrus, Trevor [Contributor, Forbes] “Why Offensive Speech Is Valuable.” March 2015. RP

Offensive speech contributes to the marketplace of ideas by expanding its borders. If the marketplace of ideas is the area where “acceptable” ideas are freely exchanged, then outside is the “black” marketplace of ideas. There, people talk about things that are not allowed in the “official” marketplace. That sometimes includes conspiracy theories, racial hatemongering, and other pure lunacy, but it also includes things desperately needing a public airing. For years, if not centuries, the field of sex research was hindered by taboo and puritanical censorship. Bigotry and prejudice towards homosexuality, divergent sexual desires of any sort, women’s sexual health, and sexual dysfunction caused researchers to be relegated to the black marketplace of ideas. In order to get out of the black market, they needed to offend. By being offensive, comedians, authors, and artists helped bring sex research out of the darkness. By saying forbidden words in jokes and skits, by looking censors in the eyes and saying “cocksucker”—one of the words that famed comic Lenny Bruce was arrested for in 1961 in a San Francisco nightclub—the crass and the boorish opened up avenues of thought and discussion that were previously forbidden. Bruce said, “you break it down by talking about it.” Slowly, conversations about sex were freed from puritanical oversight, sex researchers illuminated a crucial part of human existence, and couples had more fun. Those comics from the 60s who were “edgy” now seem quaint to our modern sensibilities. But there are always new innovators in the world of offensive speech, and no amount of government regulation will stop that. People define themselves by being offensive. They express themselves through their willingness to stomp on prevailing sensitivities and, yes, even other's feelings. **Fostering self-expression and self-development is another important reason we have a strong and uncompromising First Amendment. As homosexuals who have “come out” know all too well, expressing something publicly is crucial to defining oneself**. Does this apply to those who hate other races, religions, and ethnicities? Yes. They have as much right to define themselves through speech as anyone. And those who abhor the hateful have a right to shun them, expose them, and call them out. **Government prohibitions on hate speech drive the hateful underground, where they can proliferate freely and without pushback from those who dare not enter. Sunlight, not government, is the best disinfectant. I, for one, would like racists and bigots to speak freely. I want to know who not to invite to my parties. Government is not as effective as civil society in properly squelching and shaming hateful speech. If the government defines the parameters of acceptable speech, then many people will break those boundaries just because the government told them not to do it. They will explore the hidden, underground world of hate speech** just because it is a forbidden fruit**. There they will find whole new ways to offend people because offensive people, like water, will always find a way**. In fact, there is no correlation between the strength of a country’s hate speech laws and the eradication of hateful views. **Greece, for example, has passed laws that try to combat “certain forms and expressions of racism and xenophobia by means of criminal law.” Yet according to the Anti-Defamation League, 69 percent of Greeks hold anti-semitic views, compared to just 9 percent of Americans.** Just like drug laws, driving hate speech underground will do little to eliminate the habit, and could make the situation worse. So go forth and offend and be offended. Do it for Lenny Bruce.

### Willinger

#### Alumni vote Aff

**Willinger:** WIllinger, Jeremy [Contributor, Heterodox Academy] “Protests Rise and Donations Drop: Alumni reactions to campus trends.” August 2016. RP

Heterodox Academy was founded at a time during which issues of free speech and censorship were playing out on college campuses nationwide. While we appreciated the issues being brought to the table, many of us also marveled at the hostile and exclusionary methods used to bring them into focus. As it turns out, so did many alumni who have since decreased their support to many universities where these protests and requests for censorship were taking place. In a recent New York Times article “College Students Protest, Alumni’s Fondness Fades and Checks Shrink,” Anemona Hartocollis writes about the backlash from alumni as “an unexpected aftershock of the campus disruptions of the last academic year.” More than just a reaction, this is a repudiation of the tactics used by students and of the capitulation by administrators. From the piece: Alumni from a range of generations say they are baffled by today’s college culture. Among their laments: Students are too wrapped up in racial and identity politics. They are allowed to take too many frivolous courses. They have repudiated the heroes and traditions of the past by judging them by today’s standards rather than in the context of their times. Fraternities are being unfairly maligned, and men are being demonized by sexual assault investigations. And university administrations have been too meek in addressing protesters whose messages have seemed to fly in the face of free speech. While the article focuses specifically on Amherst College, it also mentions Princeton, Yale, and Claremont McKenna— all schools that had protests that made the national news. How far has fundraising fallen? Hartocollis reports: **Among about 35 small, selective liberal arts colleges belonging to the fund-raising organization Staff, or Sharing the Annual Fund Fundamentals, that recently reported their initial annual fund results for the 2016 fiscal year, 29 percent were behind 2015 in dollars, and 64 percent were behind in donors**, according to a steering committee member, Scott Kleinheksel of Claremont McKenna College in California. Important to note are the limited avenues alumni have to truly make their voices heard. Letters to the editor of the alumni magazine and campus paper are but small opportunities in context of how much a monetary gift actually means to the school. **Whether this is a temporary drop as a response to trending topics and issues or indicative of a larger, more permanent state of fundraising is yet to be seen. But as we get further away from the initial burst of protests last fall, other stakeholders are beginning to make their voices felt. Alumni in particular-whether they are now on the right or the left—generally endorse free speech and free inquiry quite strongly. They may play an increasingly strong role as we enter the second year of student protests.**

### Strossen – Incitement to Hatred

#### Empirics confirm legal precedents are set from free speech

**Strossen:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Incitement to Hatred: Should There Be a Limit?” *New York Law School.* 2000. RP

**Let me cite another story that makes this point. It involves an African- American schoolteacher in Florida named Bill Maxwell. He wrote a newspaper column about this incident, with this telling title:** "ACLU is Quintessential American Group." Bill Maxwell's column refers to the ACLU case that, above all others, epitomizes not only the ACLU's commitment to viewpoint-neutrality, but also our Constitution's commitment. **This case comes from right here in Illinois. I am talking about the famous-or infamous-"Skokie case," in which we defended the free speech rights of neo- Nazis to march in Skokie, Illinois**.36 As you may know, that city has a large Jewish population; even more poignantly, at the time of the case, it had a large population of Holocaust survivors. While the Skokie case was-and still is-very controversial among the general public, it was very straightforward as a legal matter, involving a classic application of the "viewpoint-neutrality" principle. Still, Bill Maxwell's experience confirms that these principles are hard to accept as such-namely, as abstract principles-and that they make far more sense to most people when they bring about some concrete, practical, personal benefit for them, or for people whose ideas they share. Here is what he wrote: Like millions of other Americans, I have a love/hate relationship with the ACLU. I donate money to it because I support its absolutist positions on civil liberties. Often, though, I curse this high-minded group and swear I'll never give it another dime. The last time I fell out of love and canceled my membership was in 1977, when the ACLU defended the right of the American Nazi Party to demonstrate in Skokie, Illinois. **Ironically, I needed the ACLU a year later when three [other] black teachers and I tried to distribute a handbill critical of our university's hiring policies. No other teachers or administrators supported us. In fact, placards produced by our colleagues labeled us as "racists," "niggers" and "educated monkeys." But the ACLU took our case and won. Our attorney explained that although the university community saw us as "obnoxious subversives," we had a constitutional right to speak**. Suddenly, I recalled the SkokieNazis. The next day I mailed a check to the ACLU."'

#### Counterspeech is empowering and activates agency

**Strossen:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Incitement to Hatred: Should There Be a Limit?” *New York Law School.* 2000. RP

**This counterspeech strategy is better than censorship not only in principle, but also from a practical perspective. That is because of the potentially empowering experience of responding to hate speech with counterspeech**. I say "potentially," since I realize that the pain, anger and other negative emotions provoked by being the target of hate speech could well have an incapacitating effect on some targeted individuals, preventing them from engaging in counterspeech. Even in such a situation, though, other members of the community who are outraged by the hate speech could engage in counterspeech, and that is likely to have a more positive impact than a censorial response. **Furthermore, once other community members denounce the hate speech, it should be easier for the target to join them in doing so**. I will illustrate these practical benefits of a non-censorial, counterspeech response to hate speech in the campus context. **Far from being paternalistic, counterspeech is empowering to students; it transforms students who would otherwise be seen-and see themselves-largely as victims into activists and reformers.** It underscores their dignity, rather than undermines it. One excellent example of the effective use of counterspeech comes from Arizona State University (ASU) in Tempe, Arizona. Under the leadership of a law professor on that campus, Charles Calleros, the faculty and administration rejected any code that outlawed hate speech or punished students who expressed it. Instead, they endorsed an educational or counterspeech response to any hate speech. Significantly, as a Latino, Charles Calleros is himself a member of a minority group. As such, though, he believes that stifling or punishing hate speech is no better for advancing non- discrimination and equality than it is for free speech. And, based on his university's actual experience with the non-censorial, more-speech response to hate speech, Professor Calleros' original speech-protective views have been reinforced. Professor Calleros has written articles about the positive impact of the non-censorial approach to hate speech at ASU, explaining how it has been empowering and supportive for the would-be "victims" of the hate speech, and also educational and promotive of tolerance and anti-discrimination values for the university community as awhole.39 Because it is so instructive, I would like to quote at some length Professor Calleros' description ofthe first hate speech incident under ASU's pro-educational, non-censorial campus policy: [F]our black women students... were understandably outraged when they noticed a racially degrading poster near the residence of a friend they were visiting in Cholla, a campus dormitory. Rather than simply complain to their friends ... they took positive action. First, they spoke with a Resident Assistant who told them that they could express their feelings to the owners of the poster and encourage them to remove it .... The students knocked on the door that displayed the racist poster and expressed their outrage in the strongest terms to the occupant who answered the door .... He agreed that the poster was inappropriate, removed it, and allowed the women to make a photocopy of it. [T]he four students then met with the staff director of Cholla. That director set up a [meeting] for all members of Cholla .... [A] capacity crowd showed up .... All seemed to accept the challenging conclusion that the poster was protected by the First Amendment, and I regard what followed as a model example of constructive response. First, the black women who discovered the poster explained as perhaps only they could why the poster hurt them deeply .... The Anglo-American students assured the black women that they did not share the stereotypes reflected in the poster, yet all agreed that they would benefit from learning more about other cultures. The group reached a consensus that they would support ASU's Black History events and would work toward developing multicultural programming at Cholla. The four women who led the discussion expressed their desire to meet with the residents of the offending dormitory room to exchange views and to educate them about their feelings and about the danger of stereotyping. I understand that the owner of the poster is planning to publish an apology in this newspaper today and a personal communication with the four women would be an excellent follow- up.... The entire University community then poured its energy into the kind of constructive action and dialogue that took place in the Cholla meeting. Students organized an open forum. The message was this: at most, a few individuals on a campus think that the racist poster is humorous; in contrast, a great number of demonstrators represent the more prevalent campus view that degrading racial stereotypes are destructive. Such a message is infinitely more effective than disciplining the students who displayed the racist poster.40 In addition to empowering the students who encountered the racist poster and educating the students who had displayed it, the non-censorial response to this hate speech incident also galvanized constructive steps to counter bias campus-wide. One of the student leaders of this constructive college-wide response was Rossie Turman, who was then Chairman of the African- American Coalition at Arizona State University. Turman's leadership in supporting both free speech and non-discrimination earned him much recognition, including an award from the Anti-Defamation League. As one press account stated: Turman and other campus minority group leaders handled their anger by calling a press conference and rally to voice their concerns and allow students and administrators to speak .... Within days, the ASU Faculty Senate passed a previously-proposed domestic diversity course requirement. Turman said: "When you get a chance to swing at racism, and you do, you feel more confident about doing it the next time. It was a personal feeling of empowerment, that I don't have to take that kind of stupidity .... **The sickest thing would have been if the racists had been kicked out, the university sued, and people were forced to defend these folks. It would have been a momentary victory, but we would have lost the war." After this incident, Rossie Turman went on to be elected student body President at ASU, the first African-American to hold that position** on a campus that had an African-American student population ofonly 2.3%. Upon his graduation from college, he went to Columbia Law School. **Therefore, for him, what could have been a disempowering, victimizing experience with hate speech became instead an empowering, leadership-development experience-not despite the absence of censorship-but precisely because of it. In contrast with the more-speech response to hate speech adopted by Arizona State University, a censorial response does not empower the maligned students. To the contrary, it may well perpetuate their victimization**. Worse yet, ironically, censoring hate speech may well empower verbal abusers, by making them into free speech martyrs. This point was captured by the Progressivemagazine: the attempt to ban or punish hateful speech does nothing at all to empower the presumed victims of bigotry. Instead, it compels them to seek the protection of authorities whose own commitment to justice is often, to put it mildly, less than vigorous. Restraining speech increases the dependency of minorities and other victims ofhate and oppression. Instead of empowering them, it enfeebles them.4

#### International evidence proves that speech codes worsen hate and are enforced against minorities

**Strossen:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Incitement to Hatred: Should There Be a Limit?” *New York Law School.* 2000. RP

**Based on actual experience and observations in countries around the world, the respected international human rights organization, Human Rights Watch, concluded that suppressing hate speech does not effectively promote equality or reduce discrimination**. In 1992, Human Rights Watch issued a report and policy statement opposing any restrictions on hate speech that go beyond the narrow confines permitted by traditional First Amendment principles. Human Rights Watch's policy statement explains its position as follows: The Human Rights Watch policy attempts to apply free speech principles in the anti-discrimination context in a manner that is respectful of both concerns, believing that they are complementary, not contradictory. While we recognize that the policy is closer to the American legal approach than to that of any other nation, it was arrived at after a careful review of the experience of many other countries .... This review has made clear that there is little connection in practice between draconian "hate speech" laws and the lessening of ethnic and racial violence or tension. Furthermore, most of the nations which invoke "hate speech" laws have a long way to go in implementing the provisions of the Convention for the Elimination of Racial Discrimination calling for the elimination of racial discrimination. Laws that penalize speech or membership are also subject to abuse by the dominant racial or ethnic group. **Some of the most stringent "hate speech" laws, for example, have long been in force in South Africa, where they have been used almost exclusively against the black majority**.42 Similar conclusions were generated by an international conference in 1991 organized by the international free speech organization, Article 19, which is named after the free speech guarantee in the Universal Declaration of Human Rights. That conference brought together human rights activists, lawyers, and scholars, from fifteen different countries, to compare notes on the actual impact that anti-hate-speech laws had in promoting equality, and countering bias and discrimination, in their respective countries. The conference papers were subsequently published in a book, Striking A Balance: 43 Hate Speech, Free Speech, and Non-Discrimination. **The conclusion of all these papers was clear: not even any correlation, let alone any causal relationship, could be shown between the enforcement of anti-hate-speech laws by the governments in particular countries and an improvement in equality or inter-group relations in those countries. In fact, often there was an inverse relationship**. These findings were summarized in the book's concluding chapter by Sandra Coliver, who was then Article 19's Legal Director: **Laws which restrict hate speech have been flagrantly abused by the authorities. Thus, the laws in Sri Lanka and South Africa have been used almost exclusively against the oppressed and politically weakest communities. In Eastern Europe and the former Soviet Union these laws were vehicles for the persecution of critics who were often also victims of state-tolerated or sponsored anti-Semitism.** Selective or lax enforcement by the authorities, including in the United Kingdom, Israel and the former Soviet Union, allows governments to compromise the right of dissent and inevitably leads to feelings of alienation among minority groups. Such laws may also distract from the need for effective legislation to promotenon-discrimination. The rise of racism and xenophobia throughout Europe, despite laws restricting racist speech, calls into question the effectiveness of such laws in the promotion of tolerance and non- discrimination. One worrying phenomenon isthe sanitized language now adopted to avoid prosecution by prominent racists inBritain, France, Israel and other countries, which may have the effect of making their hateful messages more acceptable to a broader audience."

#### Nazi Germany had speech codes and it enabled martyrdom

**Strossen:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Incitement to Hatred: Should There Be a Limit?” *New York Law School.* 2000. RP

**The historical record makes clear, however, that censorship was no more effective a response to the rise of anti-Semitic hatred in Germany's pre-Hitler era than it has been in other circumstances.** This point was discussed in a 1990 Canadian Supreme Court opinion, considering a constitutional challenge to Canada's anti-hate speech law: **Remarkably, pre-Hitler Germany had laws very much like the Canadian anti- hate [speech] law**. Moreover, those laws were enforced with some vigor. **During the 15 years before Hitler came to power, there were more than 200 prosecutions based on anti-Semitic speech**. And, in the opinion of the leading Jewish organization of that era, no more than 10%of the cases were mishandled by the authorities. **As subsequent history so painfully testifies, this type of legislation proved ineffectual on the one occasion when there was a real argument for it. Indeed, there is some indication that the Nazis of pre-Hitler Germany shrewdly exploited their criminal trials in order to increase the size of their constituency. They used the trials as platforms to propagate their message.'**

#### Censorship and speech codes are used to increase the power of the state

**Strossen:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Incitement to Hatred: Should There Be a Limit?” *New York Law School.* 2000. RP

**Just as free speech always has been the strongest weapon to advance equal rights causes, correspondingly, censorship always has been the strongest weapon to thwart them**. Ironically, the explanation for this pattern lies in the very analysis of those who want to curb hate speech. They contend that racial minorities and women are relatively disempowered and marginalized. I agree with that analysis of the problem, and am deeply committed to working toward solving it. Indeed, I am proud that the ACLU is, and always has been, on the forefront of the struggles for racial justice, women's rights, and other equality movements. I strongly disagree, though, that censorship is a solution for our society's persistent discrimination. **To the contrary, precisely because women and minorities are relatively powerless, it makes no sense to hand the power structure yet another tool that it can and will use to further suppress them**, in two senses of the word "suppress"-both stifling their expression and repressing their efforts to enjoy full and equal human rights. Consistent with the analysis of the censorship advocates themselves, the government is likely to wield this tool, along with all others, to the particular disadvantage of already disempowered groups. **Laws censoring hate speech are inevitably enforced disproportionately against speech by and on behalf of groups who lack political power**, including government critics, and even members of the very minority groups who are the laws' intended beneficiaries. **As I previously noted, this was precisely the conclusion reached by the respected international human rights organizations, Human Rights Watch and Article 19, citing examples ranging from South Africa to the former Soviet Union**. Other illustrations abound. **For example, the Turkish government has invoked its law against inciting racial hatred to bring thousands of prosecutions against Turkish writers, journalists, academicians, and scientists who have criticized the government's war against Kurdish separatists. In 1995, the Turkish government prosecuted a United States journalist accused of "inciting hatred" by writing an article on that same topic. Likewise, Singapore's authoritarian, long-time governing party has sued the main opposition party, the Workers' Party, for inciting racial hatred. Just as this article was going to press, on February 19, 2001, Britain launched a prosecution for racist abuse against a longtime anti-nuclear activist because she had dragged a United States flag on the ground during a demonstration against the controversial** "Son of Star Wars" missile defense system at the United States military base in North Yorkshire, England. The prosecution charged that this action was motived by "racist hatred" of the American people and caused "harassment, alarm and distress" to United States personnel who drove out ofthe base during the demonstration. These examples are consistent with a worldwide pattern throughout history. That pattern prompted a trenchant comment from former United States Supreme Court Justice Hugo Black, dissenting from a 1952 decision that upheld a hate speech law from right here in Illinois. Fortunately, that ruling since has been implicitly overturned by later Supreme Court decisions,65 thus vindicating Justice Black's prescient dissent. That dissent warned, invoking the concept of a pyrrhic victory: "If there be minority groups who hail this holding as their victory, they might consider the possible relevancy of this ancient remark: Another such victory and I am undone." Recall the episode from Arizona State University that I described earlier, in which the African-American student leader, Rossie Turman, explained why punishing students who engaged in hate speech would have been an ineffective strategy, as well as an unprincipled one. In his words: "It would have been a momentary victory, but we would have lost the war." Consistent with the general historical pattern, the first individuals prosecuted under the British Race Relations Act of 1965, which criminalized the incitement of racial hatred, were black power leaders. Their overtly racist messages undoubtedly expressed legitimate anger at real discrimination, yet the statute drew no such fine lines, nor could any similar law possibly do so. Rather than curbing speech offensive to minorities, this British law instead has been used regularly to curb the speech of blacks, trade unionists, and anti- nuclear activists. Perhaps the ultimate irony of this law, intended to restrain the National Front, a neo-Nazi group, is that it instead has barred expression by the Anti-Nazi League. The British experience is typical. None of the anti-Semites who were responsible for arousing France against Captain Alfred Dreyfus was ever prosecuted for group libel. But Emile Zola was prosecuted for libeling the French clergy and military in his classic letter "J'Accuse," and he had to flee to England to escape punishment. Similarly, University of Michigan Law School professor Eric Stein has documented that although the German Criminal Code of 1871 punished offenses against personal honor, "The German Supreme Court... consistently refused to apply this article to insults against Jews as a group-although it gave the benefit of its protection to such groups as Germans living in Prussian provinces, large landowners, all Christian clerics, German officers, and Prussian troops who fought in Belgium and Northern France. 6 7 Canada's recently adopted anti-hate-speech law also has led to the suppression of expression by members of minority groups. In one of their first enforcement actions under this law, Canadian Customs officials seized 1,500 copies of a book that various Canadian universities had tried to import from the United States. What was this dangerous racist, sexist book? None other than Black Looks: Race and Representation by the African-American feminist scholar, Bell Hooks, who is a professor at Oberlin." And this incident was not an aberration. Other such perverse applications of the law were cited by the dissenting opinion in the Canadian Supreme Court decision upholding this law-by a narrow 5-4 vote-under Canada's Charter of Rights and Freedom. The dissent noted: Although [the law] is of relatively recent origin, it has provoked many questionable actions on the part of the authorities . . . . Intemperate statements about identifiable groups, particularly if they represent an unpopular viewpoint, may attract state involvement or calls for police action. Novels such as Leon Uris' pro-Zionist novel The Ha,face calls for banning. Other works, such as Salman Rushdie's Satanic Verses, are stopped at the border on the ground that they violate the law. Films may be temporarily kept out, as happened to a film entitled Nelson Mandela, ordered as an educational film by Ryerson Polytechnical Institute .... Arrests are even made for distributing pamphlets containing the words "Yankee Go Home. '69

#### Reverse enforcement has occurred in colleges across the US

**Strossen:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Incitement to Hatred: Should There Be a Limit?” *New York Law School.* 2000. RP

**The British experience parallels what has happened in the United States, as evidenced by the campus hate speech codes for which enforcement information is available.7 One such code was in effect at the University of Michigan from April 1988 until October 1989**. Because the ACLU brought a lawsuit to challenge the code (which resulted in a ruling that the code was unconstitutional),"2 the university was forced to disclose information that otherwise would have been unavailable to the public about how it had been enforced. This enforcement record, while not surprising to anyone familiar with the consistent history of censorship measures, should come as a rude awakening to any who believes that anti-hate-speech laws will protect or benefit racial minorities, women, or any other group that traditionally has suffered discrimination. **Even during the short time that the University of Michigan rule was in effect, there were more than twenty cases of whites charging blacks with racist speech**. More importantly, there were only two instances in which the rule punished speech on the ground that it was racist-rather than conveying some other type of bias-and both involved the punishment of speech by or on behalf of black students. **Let me underscore that: 100% of the speech punished as racist was by or on behalf of African-Americans.** Moreover, the only student who was subjected to a full-fledged disciplinary hearing under the Michigan rule was an African-American student accused of homophobic and sexist expression. In seeking clemency from the punishment that was imposed on him after this hearing, the student asserted that he had been singled out because of his race and his political views.73 **Others who were punished at the University of Michigan included several Jewish students accused of engaging in anti-Semitic expression (they wrote graffiti, including a swastika, on a classroom blackboard, saying they intended it as a practical joke)** and an Asian-American student accused of making an anti-black comment (his allegedly "hateful" remark was to ask why black people feel discriminated against; he said he raised this question because the black students in his dormitory tended to socialize together, making him feel isolated). Likewise, the student who in 1989 challenged the University of Connecticut's hate speech policy, under which she had been penalized for an allegedly homophobic remark, was Asian-American. She claimed that other students had engaged in similar expression, but that she had been singled out for punishment because of her ethnic background. Representing this student, the ACLU persuaded the university to drop the challenged policy.7" **Following the same pattern, the first complaint filed under Trinity College's then-new policy prohibiting racial harassment, in 1989, was against an African-American speaker who had been sponsored by a black student organization**, Black-Power Serves itself. **Again, I stress that these examples are not just aberrational. Rather, they flow from the very premises of those who advocate hate speech codes**. As they rightly note, discrimination and prejudice is, unfortunately, endemic in United States society-including on campus and in our legal system. Indeed, exhaustive studies of state and federal courts throughout our country consistently show entrenched patterns of racial and gender bias**." So, for those of us who are committed to eradicating discrimination, the last thing we should want to do is to hand over to discriminatory officials and institutions power to enforce necessarily vague hate speech codes that inevitably call for subjective, discretionary decisions. This discretionary power predictably will be used in a way that is hardly helpful to disempowered groups.**

#### Speech codes are ineffective and trade off with better methods of combatting hate

**Strossen:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Incitement to Hatred: Should There Be a Limit?” *New York Law School.* 2000. RP

**Now I will comment on yet another reason why censoring hate speech may well undermine, rather than advance, equality causes: its diversionary nature. Focusing on biased expression diverts us from both the root causes of prejudice-of which the expression is merely one symptom-and from actual acts of discrimination**. The track record of campus hate speech codes highlights this problem, too, just as it highlighted the previous problem I discussed, of discriminatory enforcement. **Too many universities have adopted hate speech codes at the expense of other policies that would constructively combat bias and promote tolerance. In fact, some former advocates of campus hate speech codes have become disillusioned for this very reason**. One example is the minority student who was initially a leading advocate of one of the earliest campus hate speech codes, at the University of Wisconsin, Victor DeJesus. After the ACLU successfully challenged that code under the First Amendment, Mr. DeJesus opposed the University's efforts to rewrite the code in the hope of coming up with something that would pass constitutional muster. As the New York Times reported: Victor DeJesus, co-president of the Wisconsin Student Association, said that he initially supported the hate speech rule, but that he had changed his mind because he felt the regents were using it as an excuse to avoid the real problems of minority students. "**Now they can finally start putting their efforts into some of our major concerns like financial aid, student awareness, and recruitment retention**," Mr. DeJesus said.76

#### Colleges can condemn hate on campus without violating free speech rights – empirics go Aff

**Strossen:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Incitement to Hatred: Should There Be a Limit?” *New York Law School.* 2000. RP

**I would like to comment on a few of these non-censorial strategies for addressing bias and discrimination, to underscore their efficacy. First, it is important for people in leadership positions in any community in which hate speech occurs to denounce and dissociate their institutions from the discriminatory attitudes that such expression reflects. One good example of this kind of statement was provided in 1985 by the then-President of Harvard University, Derek Bok, who circulated a letter to the entire Harvard community, in response to a sexist flyer that an undergraduate fraternity had distributed.** He wrote: The wording of the letter was so extreme and derogatory to women that I wanted to communicate my disapproval publicly, if only to make sure that no one could gain the false impression that the Harvard administration harbored any sympathy or complacency toward the tone and substance of the letter. **Such action does not infringe on free speech**. Indeed, statements of disagreement are part and parcel of the open debate that freedom of speech is meant to encourage; the right to condemn a point of view is as protected as the right to express it. Of course, I recognize that even verbal disapproval by persons in positions of authority may have inhibiting effects on students. Nevertheless, this possibility is not sufficient to outweigh the need for officials to speak out on matters of significance to the community-provided, of course, that they take no action to penalize the speech of others. **Likewise, six years later, when some Harvard students displayed Confederate flags-usually viewed as a racist symbol, particularly offensive to African-Americans-and another displayed a swastika in response, Harvard President Bok responded with another thoughtful statement strongly criticizing the displays but equally strongly defending free speech principle**s. He wrote, in part: To begin with, it is important to distinguish clearly between the appropriateness of such communications and their status under the First Amendment. The fact that speech is protected by the First Amendment does not necessarily mean that it is right, proper, or civil. In this case, I believe that the vast majority in this community believes that hanging a Confederate flag in public view-or displaying a swastika in response-is insensitive and unwise.., because any satisfaction it gives to the students who display these symbols is far outweighed by the discomfort it causes to many others. I agree with this view and regret that the Harvard students involved saw fit to behave in this fashion .... One reason why the power of censorship is so dangerous is that it is extremely difficult to decide when a particular communication is offensive enough to warrant prohibition or to weigh the degree of offensiveness against the potential value of the communication. If we begin to forbid flags, it is only a short step to prohibiting offensive speakers. Do we really want Harvard officials (oranyone else) to begin deciding whether Louis Farrakhan or Yasser Arafat or David Duke or anyone else should be allowed to speak on this campus? Those who are still unconvinced should remember the long, sorry history of preventing Dick Gregory and other civil rights activists from speaking at Southern universities on grounds that they might prove "disruptive" or "offensive" to the campus community, not to mention the earlier exclusion of suspected communists for fear that they would corrupt students' minds.

#### Social science proves that counterspeech is effective

**Strossen:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Incitement to Hatred: Should There Be a Limit?” *New York Law School.* 2000. RP

**A study that was done by a professor at Smith College in Massachusetts demonstrated the effectiveness of this kind of counterspeech in combating bias and prejudice. It showed that when a student who hears a statement conveying discriminatory attitudes also promptly hears a rebuttal to that statement-especially from someone in a leadership position-then the student will probably not be persuaded by the initial statement**. Dr. Fletcher Blanchard, a psychologist at the college who conducted the experiment, concluded that "Afew outspoken people who are vigorously anti-racist can establish the kind of social climate that discourages racist acts.'"'2 **Thus, this study provides empirical social scientific support for the free speech maxim, discussed above, that the appropriate response to any speech with which one disagrees is not suppression but rather counterspeech.**

### Shelton

#### Speech codes make oppression worse and are paternalizing.

**Shelton:** Shelton, Michael W. [Professor, Department of Communications, Weber State University] “Hateful Help – A Practical Look at the Issue of Hate Speech.” November 1993. RP

**Many hate speech codes are also designed to protect women, minorities, and others who might be victimized by hate speech**. Hate speech reformers and advocates are often driven by the goal of "creating and sustaining true equality on campus by eradicating speech that makes minorities, women, and gays feel unwanted."' The protection of minorities and others often victimized by hate speech is certainly a noble goal. Hate speech codes are not an effective device for such protection. A number of critics of hate speech codes suggest that "informal constraints already present in the academic setting on teachers and students "can work to curb racism.' **Hate speech restrictions have actually made the struggle for equality more difficult.** Bartlett and O'Barr explain: **A focus on the verbal and symbolic abuse has the unintended consequence of further reinforcing the invisibility of those everyday forms of oppression. First, by comparison, these behaviors seem so trivial, so harmless, so ordinary …Second, this focus on regulation reinforces a conceptualization of racism, sexism, and heterosexism as blatant and intentional with specific perpetrators and specific victims.** This conceptualization makes it more difficult to recognize and respond to the kind of racist, sexist, or heterosexist behaviors that are subtle, unknowing, and without a single clear perpetrator or intended victim. Obviously, the use of a regulatory response to hate speech is problematic. "**Some black scholars and activists maintain that an anti-racist speech policy may perpetuate a paternalistic view of minority groups" because such a policy suggests "that they are incapable of defending themselves against biased expressions." Some members of the black community felt that such policies are not only paternalistic, but incapacitating as well: The basic problem with all these regimes to protect various people is that the protection incapacitates.** **To think that I [as a black man] will be told that white folks have the moral character to shrug off insults**, and I do not…That is the most insidious, the most insulting, the most racist statement of all!' **Hate speech restrictions do appear to place blacks and other groups in a special class that is deemed incapable of defending itself**

#### Speech codes make the root cause of racist attitudes worse.

**Shelton:** Shelton, Michael W. [Professor, Department of Communications, Weber State University] “Hateful Help – A Practical Look at the Issue of Hate Speech.” November 1993. RP

**Hate speech policies might also preclude the pursuit of a real solution to the problems of racism and sexism**. An "anti-hate speech policy stultifies the candid intergroup dialogue concerning racism and other forms of bias that constitutes an essential precondition for reducing discrimination." **'The fixation with hate speech codes is a distraction to the resolution of the root causes of racist and sexist conduct. The hate speech debate" may even stymie a full analysis of the wider range of subordinating behaviors that characterize racism, sexism, and heterosexism on college campuses in this country." The use of hate speech codes might force racist and sexist behaviors underground along with ideas that might help to resolve such behavior. If "such bans succeed in suppressing obnoxious impulses, they merely drive them underground-along with many ideas that deserve to be aired, if only to kindle a more heated debate." 'Indeed, the use of a hate speech code approach is diversionary. "It makes it easier for communities to avoid coming to grips with less convenient and more expensive, but ultimately more meaningful, approaches for combating racial discrimination."'**

### Long

#### Speech codes aren’t working – hate crimes and speech are high in the status quo on campuses

**Long 2017:** Long, Katherine [Seattle Times higher education reporter] “UW on edge over perception of rise in hate speech.” *The Seattle Times.* January 27, 2017. RP

**More than a week after a Breitbart News editor’s speech was punctuated by violence on the University of Washington’s Red Square, students and faculty say the campus is on edge because of the perception that hate speech is on the rise**. Some students and faculty who say they’ve been targeted by online harassment and threats are calling for a more forceful response from the university. The university also is keeping an eye on a possible pro-Donald Trump demonstration on campus Monday. UW spokesman Norm Arkans acknowledged that Trump’s election seems to have resulted in a wave of hate speech, and the university is trying to find ways to support people who are being harassed. “We want them to feel as though we’ve got their backs,” he said. “I think we need to figure out more ways to do that.” **Why does one of the country’s most liberal campuses appear to be suddenly experiencing a rash of prejudice? The switch in people’s willingness to openly express bias and prejudice is real nationwide, and it’s wrapped up in the concept of social norms, which changed after Donald Trump was elected to the highest office, an expert on prejudice says. “Literally overnight” after Trump won the election Nov. 8 it became acceptable to disparage Muslims, Mexican immigrants, women and other minority groups,** said Chris Crandall, a University of Kansas psychology professor who grew up in Seattle and received his undergraduate degree at the University of Washington. **Crandall said his research shows that President Trump’s election didn’t create new biases. But his win has unleased the expression of those prejudices. People who felt biases against others suddenly decided it was all right to say them out loud, Crandall said. That feeling extended to people on all sides of the political spectrum, including Democrats, who earlier felt it was wrong to express bias, but now believe it’s acceptable, his research shows. In his Jan. 20 speech at the UW, Breitbart editor Milo Yiannopoulos — who’s been banned on Twitter — mocked liberals, Democrats, feminists, gays and lesbians, to his audience’s delight**. He concluded by saying that Americans are raising a generation of children who can’t handle words used against them, that cyberbullying is not the same as real bullying, and that people should ignore things they find offensive. “If someone is speaking on campus you don’t like, don’t attend the lecture,” he said. Students who had opposed Yiannopoulos’s appearance on campus argued that the talk should be canceled out of concern for student safety. On the night of the speech, protesters who tried to shut down the event clashed with people standing in line to hear Yiannopoulos, and one man was shot in the stomach. UW President Ana Mari Cauce defended Yiannopoulos’ right to speak, saying to do so meant upholding the public university’s commitment to the free exchange of ideas and expression. But she also condemned the violence. Late this week, a Facebook group calling itself “UW Wall Building Association” advertised a pro-Trump campus demonstration that is to take place Monday on Red Square. The UW College Republicans, who hosted Yiannopoulos, say the event is fake, placed online to bait students and the media. But the Latinx Student Law Association, which believes UW students are behind the post, called on the university to intervene because the event constitutes harassment, which would violate the UW’s Student Code of Conduct. “We want the administration to really address this seriously now, especially because of heightened sense of fear and anxiety” among all students, especially undocumented students, said Michelle Saucedo, a member of the Latinx Law Student Association, who helped draft a letter calling on the university to take action. “We’re not trying to limit anyone’s free speech,” Saucedo said. “We’re calling on the university to stand by the Student Code of Conduct, and investigate” to find out who is behind the post. The UW Wall group is violating the code, she said, by targeting a specific group based on race, national origin and citizenship. The post also calls for students to bring bricks, which could be used as weapons. The group has created a “hostile and offensive environment in which undocumented and Latinx UW students feel unsafe and unwelcome,” the letter reads. Saucedo said about 1,500 students, faculty, staff and community members have signed it. UW officials say they don’t know if the event is real or fake, but they plan to have security in place on Monday. In response to the rally, Denzil Suite, the UW’s vice president for student life, released a statement Friday saying that anyone who commits criminal acts will be arrested. S**ome online threats in recent weeks have extended to individual students and facult**y. Alan-Michael Weatherford, a graduate student who teaches a queer-studies course, said he was harassed online after the Yiannopoulos event, including posts that have included slurs, threats and the release of his personal information. “Let me just say very clearly that having an entire internet presence solely dedicated to finding, contacting and harassing with the promise of potentially harming you is petrifying,” he wrote in a guest editorial to the UW Daily. In an interview, Weatherford said the university is “barely responding, if at all,” and has told him he needs to take care of it himself. He said he thinks other students have also been targeted with harassment. Chanda Hsu Prescod-Weinstein, a theoretical astrophysicist at the UW, said she, too, has been targeted by hate speech, including hate mail and threats, because of her race and religion. She is African American and Jewish. “I am a firm believer in free speech, but it goes both ways, and I’ve been disappointed that while Milo has been vocal about his views, there’s been relative silence from the administration,” she said. Crandall, the psychology professor, said it’s wrong to pretend that words can’t incite people to violence, even if free speech is protected by the Constitution. In arguing that speech is not the same as physical violence, Yiannopoulos is “making the argument that Hitler’s speeches had no effect, and I think that’s a foolish argument,” Crandall said. “What people say really does matter.” Crandall noted that during his election rallies, Trump told his audience to beat up protesters. And some protesters did get assaulted. He advised people who were upset about the increase in expression of prejudice to be open to what others have to say. “Be open to dissent, and be open to dissenting. And we all need to keep doing our jobs, as a reporter, a researcher, a university teacher, the cop on the beat working with the prosecutors to ensure equal justice, the politicians in town making good policy, the parents of students ensuring that the schools and the school board are open to helping all children.” Said Crandall: “There’s no shortage of activities — and activity is much better than sitting in a dark and quiet room with a computer, being enraged and feeling futile.”

### Kurtz et al

#### This is an explanation of what a free speech policy would do

**Kurtz et al:** Stanley Kurtz, James Manley, and Jonathan Butcher “CAMPUS FREE SPEECH: A LEGISLATIVE PROPOSAL.” *Goldwater Institute.* January 2017. RP

In her 2016 convocation speech, Brown University President Christina Paxson explained that a reporter had recently asked school officials if Brown had established any “safe spaces” on campus. “What on earth are they referring to?” Paxson said. “Idea-free zones staffed by thought police, where disagreement is prohibited?” Yes, precisely such spaces. Sadly, this kind of challenge to campus free speech is now widespread. Surveys show that student support for restrictive speech codes and speaker bans is at historic heights. As both a deeply held commitment and a living tradition, freedom of speech is dying on our college campuses, and is increasingly imperiled in society at large. Nowhere is the need for open debate more important than on America’s college campuses. Students maturing from teenagers into adults must be confronted with new ideas, especially ideas with which they disagree, if they are to become informed and responsible members of a free society. **In order to protect the increasingly imperiled principle and practice of campus free speech, this brief offers model legislation designed to ensure free expression at America’s public university systems. It is hoped that public debate over these legislative proposals will strengthen freedom of speech at private colleges and universities as well. The key provisions in this model legislation are inspired by three classic defenses of campus free speech: Yale’s 1974 Woodward Report, The University of Chicago’s 1967 Kalven Report, and the University of Chicago’s 2015 Stone Report. The model legislation presented and explained in this brief does several things: It creates an official university policy that strongly affirms the importance of free expression, nullifying any existing restrictive speech codes in the process. It prevents administrators from disinviting speakers, no matter how controversial, whom members of the campus community wish to hear from. It establishes a system of disciplinary sanctions for students and anyone else who interferes with the free-speech rights of others. It allows persons whose free-speech rights have been improperly infringed by the university to recover court costs and attorney’s fees.** It reaffirms the principle that universities, at the official institutional level, ought to remain neutral on issues of public controversy to encourage the widest possible range of opinion and dialogue within the university itself. It ensures that students will be informed of the official policy on free expression. It authorizes a special subcommittee of the university board of trustees to issue a yearly report to the public, the trustees, the governor, and the legislature on the administrative handling of free-speech issues. Taken together, these provisions create a system of interlocking incentives designed to encourage students and administrators to respect and protect the free expression of others.

### Davidson

#### Even negative speech as positive effects – it galvanizes the community behind social problems.

**Davidson:** Davidson, Alexander [Student, California Polytechnic State University] “The Freedom of Speech in Public Forums on College Campuses: A Single-Site Case Study on Pushing the Boundaries of the Freedom of Speech.” June 2016. RP

**During the 26th Anniversary of the Berlin Wall’s falling, the California Polytechnic State University College Republicans created a free speech wall for students to speak their minds. That’s the thing about free speech, it allows for conventionally positive speech to emerge, but it also allows for conventionally negative speech to surface. After the walls successful establishment on Dexter Lawn, which is considered to be a public forum on California Polytechnic State University’s campus, there were remarks written that contained derogatory statements about Muslims as well as the LGBTQ community**. One of the messages contained on the wall was a drawing of the Muslim prophet Muhammad carrying explosives and various rifles, the cartoon expressed the sentiment, “Islam is a political movement of violence and oppression.” Next to the drawing read, “Don’t draw me I’ll jihad your face! ALLAHU AKBAR” (Bandler, A., 2015). The free speech wall also featured a mockery-style voting ballot with the check- boxes for “male” and “female” and a caption reading, “Gender: Pick One” (Bandler, A., 2015). At first glance it would seem that free speech has created a soapbox for hatred, but this isn’t entirely the case. **130 students gather to protest the wall and to speak out against the hurtful statements.** One of the California Polytechnic State University Republicans members expressed that people of all religions have committed terrorist attacks and that they do not represent their religious communities as a whole. **The thing is, that while some speech is vastly unpopular, it does not mean it is any less worthy of protection; however, it created positive feedback from the community. This speech created a safe environment for taboo issues to be brought to the surface instead of lying beneath the surface. This speech brought a group of 130 people together to stand and speak for what they believe in and that is the purpose of free speech – to allow a free marketplace of ideas to exist.**

#### More empirical examples of counterspeech

**Davidson:** Davidson, Alexander [Student, California Polytechnic State University] “The Freedom of Speech in Public Forums on College Campuses: A Single-Site Case Study on Pushing the Boundaries of the Freedom of Speech.” June 2016. RP

**Back in 2008, there was an incident that took place at California Polytechnic State University’s on-campus crop science house that involved a noose, a confederate flag and allegations of a sign that contained racial and gay slurs**. The sign and props were used as decorations for a Halloween party that took place on campus. **Hundreds of students gathered to protest the incident to try to foster an environment of acceptance. The students hoped to raise awareness about the happening that took place as well as showcase disapproval of the hate speech that took place. During the protest, a petition was also passed around that garnered 150 signatures for the expulsion of the students that were living in the crops house at the time. Much like the incident that took place on the free speech wall at California Polytechnic State University, the free marketplace of ideas allowed for good speech to conquer the bad speech. The censorship of negative speech will not destroy it, but instead drive it under the ground; however, having it out in the open allows both sides of an issue to be presented and it allows for the people to decide which side of the coin they want to land facing the surface.**

### Bauer

#### Marcuse’s idea of free speech denigrates into totalitarianism.

**Bauer:** Bauer, Fred [Fred Bauer is a writer from New England. His work has been featured in numerous publications, including The Weekly Standard and The Daily Caller. He also blogs at A Certain Enthusiasm. His Twitter handle is @fredbauerblog.] “The Le and ‘Discriminating Tolerance’.” *The National Review.* June 2015. RP

**Postmodern “discriminating tolerance” makes our public affairs more acrimonious because it suggests that an authentic debate is illegitimate. This kind of politics asserts that history has only one direction (ever to the left)** and that the only valid kind of conversation is one that goes in that direction. **But a one-way conversation isn’t really a conversation, and the attempt to flatten the richness of human life to a single directional arrow leads to a caricature of justice**. **People across the political spectrum have increasingly come to recognize the narrow-minded viciousness of the new politics of intolerance, shame, and opprobrium**. A shift to a more inclusive and expansive kind of tolerance could be a way out of the cul-de-sac of political rage. This alternative cultural politics would recognize human partiality and inherent dignity. It would say that we should be free to challenge opinions and values, but that we should be wary of visiting punishment on individuals because of their opinions and values. Inclusive tolerance would invite rigorous debates about ethics and human nature as a way of enriching our understanding of ourselves. This alternative approach has a long pedigree in the Anglo- American tradition. The 17th-century Puritan Roger Williams, for instance, appealed to the idea of tolerance out of a respect for human limitations and a recognition of inherent individual dignity. In The Bloudy Tenent of Persecution, Williams argued that each person has the right to follow his or her own creed and that using force to compel individual conscience was a form of “soul rape.” Because we do not have absolute knowledge of God’s plan and because of the inherent value of each person, Williams called for a broad cultural tolerance, in which all creeds would be welcomed into the public square. This tolerance would not be moral nihilism (it is not, after all, denying the legitimacy of moral truths) but rather the cultivation of a sense of modesty and mutual respect. This form of tolerance would not resolve our public disagreements for us. Questions about economic structures, sexual ethics, personal identity, and political participation would remain very much up for grabs. **Rather than the authoritarian imposition of self-righteous assumptions, inclusive tolerance would pave the way for a more integrated and enriched public square.** Because it is based on the inherent legitimacy of the individual, this mode of tolerance would not lose its way in the fray of collectivist identity politics. Inclusive tolerance supports a person’s freedom of conscience not because that person belongs to a given group — but because he or she breathes. **The Left has no monopoly on weaponized intolerance, and the recent heightening of cultural intolerance is another instance of the way that those who thirst for power also often crave the ability to ward off critiques of their use of power. As the history of the 20th century shows, programmatic perfectionistic agendas often try to crush those whose ideas complicate the pristine vision of utopia. A politics of tolerance would recognize the messiness and imperfections of our lives in this world, but it would also allow us to search for and to defend virtue, justice, and happiness.**

### Powers

#### The right to give unlimited money to student elections isn’t protected constitutionally.

**Powers:** Powers, David M. [Contributor, College Student Affairs Journal] “The Constitutional Implications of Expenditure Limits in Student Government Elections.” January 2009. RP

**The first amendment to the Unites States Constitution protects the right of free speech. Of course, this freedom is not absolute. This is particularly true on college campuses. The U.S. Supreme Court has held that universities and colleges have the right to "control activity which may be detrimental to the sacred provision of higher education**" (Willis, 1997). **Further, universities have a right "to make academic judgments as how to best allocate scarce resources** [and] to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study" (Widmar v. Vincent, 1981, p. 276). **Because these rights sometimes conflict, the courts must seek to balance them with one another.** Widmar, 1981, p. 276).

#### Discount evidence that’s not about student governments – SCOTUS rulings in other contexts don’t apply – their speech isn’t protected constitutionally.

**Powers:** Powers, David M. [Contributor, College Student Affairs Journal] “The Constitutional Implications of Expenditure Limits in Student Government Elections.” January 2009. RP

**In this paper, I will examine this conflict in the context of spending limits placed by universities on candidates running for positions in student government. Most, if not all, universities place some limits on the campaign activities of their students. While the U.S. Supreme Court held in Buckley v. Valeo that the first amendment protects unlimited campaign expenditures in civil politics,** the courts have thus far declined to extend this principle to student government elections in several pivotal cases**. The most recent case to address this issue was Flint v. Dennison, decided in June 2007**. In that case, the Ninth Circuit was only the second Federal Appeals Court to examine the issue, the other being the Eleventh Circuit. This paper will analyze those holdings, as well as the rationale that those courts used to reach their decisions.

### Woodhouse

#### Donor relationships are resilient

**Woodhouse:** Woodhouse, Kellie [Contributor, Inside Higher Ed] “Appeasing the Ones Who Feed You.” December 2015. RP

**Donor relationships are often built over decades or more of engagement and interaction with a university—creating bonds between donor and college that are not easily broken**, says Ivan Adames, executive director of alumni relations and development at Northwestern University. “**At the end of the day you might have a disagreement, but it doesn't diminish that pride that you have in that relationship,” he said. Northwestern has experienced some student demonstrations over race. And though it has received varying responses from alumni,** giving has not been impacted. “**There would have to be a significant lapse in institutional integrity for it to really be disruptive.”**

#### Donors won’t stop giving – surveys of nearly 1,000 prove.

**Woodhouse:** Woodhouse, Kellie [Contributor, Inside Higher Ed] “Appeasing the Ones Who Feed You.” December 2015. RP

**Strauss recalled an institution his firm worked with about a decade ago that was cracking down on its fraternities after a series of troubling incidents. Alumni were contacting administrators expressing frustration with the crackdown, and the university was worried giving would suffer because of alumni concerns. But a survey of 900 alumni found that less than 1 percent of respondents actually said they’d decrease their giving. “They were hearing from all the squeaky wheels,” recalls Strauss, who added that a relatively small proportion of alumni at any institution are substantial donors.** It’s the big donors that universities should keep in touch with during times of turmoil on campus. “**We used to talk about the 80–20 rule, that 80 percent of the money comes from 20 percent of the donors**. For many of these institutions it’s now the 95–5 rule. The concentration has become just amazing,” Strauss said. At Yale University, minority students have issued a set of demands and staged a series of protests after Erika Christakis, an associate master of one of Yale’s residential colleges, sent out an email that many students believe was racially insensitive. In her email Christakis questioned whether Yale should advise students on what types of Halloween costumes to avoid, asking, “Is there no room anymore for a child or young person to be a little bit obnoxious ... a little bit inappropriate or provocative or, yes, offensive?” Some students and alumni found the email thought-provoking, but many thought it was offensive and called for her resignation. One video of a student angrily confronting Christakis’ husband went viral. More than 700 people—many of them alumni—signed a letter in support of the Christakis. Meanwhile, more than 2,000 alumni signed a letter in support of the protesters. Christakis has since resigned from her teaching position at Yale but remains an associate master of the residential college. Yale was flooded with reactions from alumni, through email and social media, many of whom wanted to know how the university was going to react to student demands. Yale President Peter Salovey addressed the protests on campus, and the controversy over free speech, directly with alumni at an event earlier this month. He said discussions over diversity, race, and academic freedom, while difficult, are not “something we should be running from or spinning” and he encouraged alumni to be part of a larger community conversation. Meanwhile, Christakis’ resignation prompted concerns from many alumni who were already worried about the state of free speech on Yale’s campus. “As one of many alumni who defended you for [your] defense of free speech, [please] reconsider leaving or risk emboldening censors!” one alumnus, Glenn Hurowitz, wrote to Christakis on Twitter. Erin Hennessy, vice president of TVP Communications, a public relations agency focused on higher education, said that as institutions communicate with alumni about protests on campus, they need to underscore that the expectations of the modern-day student are different from what many alumni “wanted or needed” when they were on campus. “These are institutions that change and live and grow every day, so the student body we served today may not be the same we served 20 years ago,” she said. At Hamilton College a group of black students using the moniker the Movement have a list of at least 39 demands aimed at bettering race relations and increasing diversity on campus. A few of the demands have rankled some alumni, including a demand that white faculty be discouraged from leading departments about “societies colonized, massacred and enslaved.” Explained one alumnus on a Facebook post: “I’m inclined not to even give the movement [sic] the time of day. If you’re going to make this many ridiculous demands with this many inaccuracies you don’t really deserve a discussion.” As alumni contact the college—many with concerns over the approach students have taken and the way demands have been communicated to administrators—officials remind them that, even among students, there’s a diverse set of views, including a contingent that disagrees with most of the protesters’ demands. “We remind alumni that students don’t always express their sentiments perfectly, but the fundamental issues are real at Hamilton and throughout society,” explained Mike Debraggio, Hamilton’s assistant vice president of communications, in an email. “Colleges, of course, should be places where differing views and perspectives are shared and debated, and sometimes those discussions are difficult.” During an alumni event in New York on Dec. 5, Hamilton President Joan Hinde Stewart drove this point home: “These are interesting times in higher education. Campus conversations across the country are reaching a level of intensity we haven’t seen in a long time. Is this surprising? Not really,” she said. “It’s not a bad thing for questions previously overlooked to be raised in a civil way.” Hennessy says that colleges will have the best results in communicating with alumni if they send out regular updates and try to educate them about new initiatives on campus. Yale, for example, is responding to each email inquiry from alumni directly. “The institutions that [have] threaded this needle are ones that have stayed in touch so that alumni are hearing regularly from their institution,” she continued. Added Adames, “It’s one thing for them to submit their comments and not have anything in response, as opposed to saying, ‘We hear you—this is what our response has been.’ All of us just want to be heard.” Yet even with constant communication, it’s impossible to appease everyone. “With some of these more difficult issues, you’re going to have alumni say, ‘Well, that’s not my college or university anymore,’ and that’s unfortunate,” Hennessy said. “But on the flip side, a lot of alumni may be re-engaged in the institution” because they are sympathetic to protesters’ demands. **Whatever the case, institutions can’t stop having hard conversations for fear of upsetting alumni,** she said. “This is the current atmosphere and these are important conversations, and putting aside these conversations because we might upset one of these constituencies, even if they are very important constituencies, isn’t the best solution for this day and age.”

### Wang

#### Non unique – donations are low now.

**Wang:** Wang, Amy X. [Contributor, Quartz] “Why alumni donations to Yale and other US colleges are hitting a new low.” *Quartz.* February 2016. RP

**Some two decades years ago, when asked to give to their alma mater, an enthusiastic 50% of Yale graduates opened their wallets. Last year, roughly 33% did, despite steady increases in university solicitation. Alumni donations are now at their lowest levels in two decades**, according to Yale’s Office of Institutional Research. Why? Administrators aren’t sure, but Yale’s president Peter Salovey blames “trends in society today that probably work against participation,” according to the Yale Daily News this week**. The problem isn’t limited to Yale. For years, colleges and universities across the US have seen their alumni giving rates decline**. One reason is that college graduates face a growing slew of philanthropic options: There are more charities, religious institutions, social groups, and Kickstarter campaigns than one can count, and it’s hard to choose where to put your (finite amount of) money. Schools, especially elite schools with big endowments, can seem less appealing than social justice nonprofits or tech innovations.

#### So many thumpers – non-profits outside of colleges, poor solicitation methods, and college debt.

**Wang:** Wang, Amy X. [Contributor, Quartz] “Why alumni donations to Yale and other US colleges are hitting a new low.” *Quartz.* February 2016. RP

Some two decades years ago, when asked to give to their alma mater, an enthusiastic 50% of Yale graduates opened their wallets. Last year, roughly 33% did, despite steady increases in university solicitation. **Alumni donations are now at their lowest levels in two decades, according to Yale’s Office of Institutional Research. Why? Administrators aren’t sure, but Yale’s president Peter Salovey blames “trends in society today that probably work against participation**,” according to the Yale Daily News this week. The problem isn’t limited to Yale. For years, colleges and universities across the US have seen their alumni giving rates decline. **One reason is that college graduates face a growing slew of philanthropic options: There are more charities, religious institutions, social groups, and Kickstarter campaigns than one can count, and it’s hard to choose where to put your (finite amount of) money. Schools, especially elite schools with big endowments, can seem less appealing than social justice nonprofits or tech innovations. There’s another possible explanation: College solicitation efforts may be getting totally outdated.** A 2014 report from Dan Allenby, founder of the Annual Giving Network and an assistant vice president of annual giving at Boston University, not**es that schools still use terminology like “giving back” when most young alums don’t actually feel indebted to their schools. Considering the record level of college debt in the country, “how can we expect alumni to ‘give back’ when they haven’t finished paying the original bill?” Allenby asks. What proportion of tuition and college expenses did you borrow? Given that most graduates nowadays also communicate through social media rather than alumni channels, it may not be surprising that many feel more disconnected from their schools than their parents did**. Recent social turmoil on college campuses has only added to the feeling of institutional alienation. To snag those precious alumni donations in the future, schools will have to get a lot more persuasive. That’s not to say they’re exactly struggling for cash, though: Thanks to mega-donations from rich individual donors, American universities still netted a record $40 billion in 2015.

### Savransky

#### A lack of free speech risks a loss in federal funds – Trump is threatening it now.

**Savransky February 2017:** Savransky, Rebecca [Contributor, The Hill] “Trump Threatens Funding Cut If UC Berkeley ‘Does Not Allow Free Speech’.” *The Hill.* February 2, 2017. RP

**President Trump early Thursday threatened to cut federal funding to the University of California, Berkeley after violent protests broke out on its campus Wednesday in response to a planned appearance by a far-right commentator. "If U.C. Berkeley does not allow free speech and practices violence on innocent people with a different point of view — NO FEDERAL FUNDS?**" the president tweeted Thursday morning. Rep. Barbara Lee (D-Calif.) on Thursday released a statement calling the president's apparent threat an "abuse of power." “President Donald Trump cannot bully our university into silence. Simply put, President Trump’s empty threat to cut funding from UC Berkeley is an abuse of power," she said in the statement. "As a senior member of the education funding subcommittee, I will continue to stand up to President Trump’s overreach and defend the rights of our students and faculty**.” A scheduled appearance by right-wing commentator Milo Yiannopoulos was canceled Wednesday night, about two hours before the Breitbart editor was scheduled to speak.** The university said in a statement the violence was "instigated by a group of about 150 masked agitators who came onto campus and interrupted an otherwise non-violent protest," according to NPR. "This was a group of agitators who were masked up, throwing rocks, commercial grade fireworks and Molotov cocktails at o icers," U.C. Berkeley Police Chief Margo Bennet told The Associated Press. More than 1,500 people had showed up to protest Yiannopoulos's appearance on campus. At least six people were injured, according to CNN. Yiannopoulos called what happened "an expression of political violence," according to CNN. "I'm just stunned that hundreds of people ... were so threatened by the idea that a conservative speaker might be persuasive, interesting, funny and might take some people with him, they have to shut it down at all costs," he said in a Facebook Live video.

### Byrne

#### Perm do the counterplan – it doesn’t restrict any constitutionally protected speech and is narrow enough to meet constitutionality.

**Byrne:** Byrne, J. Peter [Associate Professor, Georgetown University Law Center.] “Racial Insults and Free Speech Within the University.” *Georgetown University Law School.* 1991. RP

Universities can justify restraints **on student's extracurricular activities when they substantially interfere with academic values and no independent student value, such as the political rights of students as citizens, outweighs the academic value in the circumstances. Obviously, many student activities can be prohibited because they plausibly can be considered harmful to the educational experience. For example, the Supreme Court long ago held that the fourteenth amendment offers no hindrance to a state university's prohibiting students from belonging to a fraternity**; recently the Court turned back a student's first amendment challenge to a university prohibition of commercial solicitation in dormitories. In contrast, the Court has up- held students' first amendment rights against universities when the students' extracurricular expression touched more closely on their political rights as citizens and the universities failed to articulate valid interests in prohibiting the speech. **This approach directs us to consider carefully the effects of racial insults on the university's academic values and goals in order to bal- ance these effects against the students' rights to free speech.**

#### Even lines such as racial insults are arbitrary and permit state censorship

**Byrne:** Byrne, J. Peter [Associate Professor, Georgetown University Law Center.] “Racial Insults and Free Speech Within the University.” *Georgetown University Law School.* 1991. RP

The case for protecting racist speech against general governmental prohibition or punishment must stand on pessimism about the ability of a pluralistic and democratic society to censor any form of expression without degenerating into an attempt to suppress political opposition or cultural differences.' 0 This argument has two constituent parts. **First, government has no acceptable criteria for distinguishing between valuable and worthless speech. Even a well-meaning censor cannot in principle distinguish between an insult and a good faith assertion that is controversial and offensive to members of a racial group, such as a speech arguing that affirmative action has damaged performance in some city offices because blacks with substandard test scores have been hired. Second, the implementation of governmental criteria will most likely become an expression of the political goals of the group that controls the censor's office. For example, it has been argued that efforts to suppress racial insults in universities reflect the political power of minorities in universities controlled by a liberal elite, and that liberals and minorities should be concerned that the same forms of censorship will be used against them if conservatives gain control of the universities**. This argument is formidable both in practice and in principle. One need only refer to the current controversy about the National Endowment for the Arts sponsorship of "obscene" artistic displays to demonstrate how likely it is that censorship will be incompetent and politically motivated.12 Much of the lingering opposition to prohibitions on pornography stems from memo- ries of government agents seizing copies of Ulysses and Lady Chatterly's Lover.' 3 The specter of Joe McCarthy and the House Un-American Activi- ties Committee still haunts our notions of academic freedom.' 4 These bad experiences only confirm in practice what liberals have long argued in princi- ple: no official orthodoxy should prescribe what citizens may say on any issue.' 5 **Within the confines of the Constitution and the law, government holds only to the preferences held by shifting majorities**. The bright side of this tradition is the citizen's broad liberty to express herself; the dark side is the government's lack of moral principle and authority. Governmental crite- ria for placing some forms of expression beyond the pale are suspect not simply because individual censors may be stupid or venal, but because democratic governments lack permanent commitments to determinate moral val- ues from which a censor could derive acceptable criteria for regulating speech. Our insistence on free speech stems not so much from optimism about the emergence of truth from open debate as from realistic pessimism about the character of representative government. Thus, the argument against regulating racist speech primarily cautions against the precedential effect of permitting censorship. Leading cases on the protection for other types of offensive speech bear out this emphasis on the incompetence of the censor. The Supreme Court's opin- ion in Cohen v. California16 deserves particular mention, both because it is such an excellent opinion and because the case typifies the era in which stu- dent free speech principles were developed. Cohen was arrested for wearing in a courthouse a jacket bearing the message, "Fuck the Draft." The Supreme Court held that his consequent conviction for "offensive conduct" violated the first amendment. 17 In his opinion for the Court, Justice Harlan rejected the State's argument that it could constitutionally punish "public utterance of this unseemly expletive in order to maintain what [it] regard[s] as a suitable level of discourse within the body politic.""' Harlan wrote that in a "diverse and populous society" such as the United States, "no readily ascertainable general principle exists" for the state to decide which expressions should be prohibited.19 After all, "one man's vulgarity is another man's lyric. Indeed, we think it largely because governmental officials can- not make principled distinctions in this area that the Constitution leaves mat- tersoftasteandstylesolargelytotheindividual."20 Cultural pluralism and relativity of values deprive the state of any legitimacy in seeking to limit the forms of speech in order to strengthen overall communication. 2 1 Because the censor cannot know what manner of speech most effectively communicates ideas to people of differing cultures and abilities, it has no principled basis for outlawing any form of speech. Harlan follows his appraisal of governmental incompetence to censor with a warning about the dangers of bad faith: "In- deed, governmental units might soon seize upon the censorship of particular words as a convenient guise for banning the expression of unpopular views."' 22 Thus, Cohen relies on a view of the state as an institution at once without moral commitments sufficient to provide justifiable criteria for prohibiting certain forms of speech, and subject to popular control such that prohibition of any form of speech likely will entail the pursuit of the political program of whatever majority might temporarily gain control of government machinery.

#### Problems with doing it based on race

**Byrne:** Byrne, J. Peter [Associate Professor, Georgetown University Law Center.] “Racial Insults and Free Speech Within the University.” *Georgetown University Law School.* 1991. RP

**Professor Matsuda also argues that only hate speech directed at members of subjugated groups by members of dominant groups forfeits first amendment protection. Thus, while epithets directed at blacks, for example, would be actionable, those directed at whites would not. Although the vulnerability of historically disadvantaged groups has brought racial insults to a new prominence, it seems wrong both pragmatically and in principle to condition first amendment protection on the political positions of the speaker's and target's ethnic groups**. **Professor Matsuda acknowledges that the line- drawing becomes harder if the hateful speech is directed at the white target's gender, sexual preference, religious affiliation, age, poverty, or handicap.57 Further confusion exists because Professor Matsuda concedes that a group's status as subjugated can change position over time and in different localities**. She professes herself unconcerned by the sheer difficulty of such determinations, dismissing concerns with the observation: "The larger question is how anyone knows anything in life or in law. To conceptualize a condition called subordination is a legitimate alternative to denying that such a condi- tion exists." 59 But surely one can acknowledge the reality of social inequality without accepting a legal procedure, backed by the powerful apparatus of criminal prosecution, which determines whether an offended individual be- longs to a relevant group that suffers subordination in a certain place and time. **Are black males "subordinate" today in Washington, D.C.? How should a court factor the respective views of Asians, women, or Boston black males on this question? Can it be doubted that trials over these issues, the outcome of which will determine whether a member of one of these groups will suffer a criminal penalty, would exacerbate tensions among members of these groups**? Such inquiries into relative subjugation would not only be supremely diffi- cult, but they would also be unable to achieve political or constitutional legit- imacy. If, as Professor Matsuda urges, legal approaches to hate speech should turn on the experience of the victims qua victims, it is difficult to see how the outcomes can appear to be justified to non-victims. Generally, con- stitutional rules are justified by reference to some shared (if also disputed) public value, such as equality or the dignity of individuals. Advocates of the prohibition of hate speech would forfeit much to rely on the feeling of histor- ical injustice. Most groups in American society nurse grievances for past wrongs. **All racial and ethnic insults imply debasement of the individual through the invocation of the stereotypical vices of his or her group. To elevate some of these insults into constitutional standards but leave others beyond the reach of law denies our common humanity.**

#### Allowing rights on the basis of group allows cooptation by dominant elites.

**Byrne:** Byrne, J. Peter [Associate Professor, Georgetown University Law Center.] “Racial Insults and Free Speech Within the University.” *Georgetown University Law School.* 1991. RP

These comments suggest a strength of the Court's broad view of first amendment protection for offensive speech that frontal assaults have failed to touch: because democratic government is incompetent to proscribe certain forms of speech, the Court will deny it the power to do so even in cases in which a substantial majority agrees that a form of speech is worthless and harmful. **Thus, even if one were happy with a democratic determination to punish racist insults because "[r]acial supremacy is one of the ideas we have ...considered and rejected," 6 one might worry about which other ideas the controlling majority might consider to have been so decisively rejected that utterance of them could lead to prosecution**. Our political life stands upon very few moral principles that offer guidance in making these choices.61 We expect most political decisions to reflect the preferences of shifting majorities in legislatures, and we employ constitutional rules as an imperfect mecha- nism of preserving liberties that embody consensual moral principles. Before a constitutional liberty is released to permit regulation of a perceived social wrong, a convincing argument that fighting the wrong advances a moral principle rather than a political agenda is required. Our reluctance to limit constitutional liberties reflects our doubts about the capacity of legislatures to identify and apply moral principles. **Proposing legal protection for some but not all victims of racial insults exacerbates anxiety about whether such protection rests on a political agenda. Simply arguing that civic virtue ought to play a larger role in the decisionmaking of representative assemblies will not make it so without profound changes in our political institutions and culture. The distrust of democratic capacity to censor speech must be over- come before general restrictions on racist insults can be found constitutional.**

#### Speech codes can’t solve, and counterspeech is better.

**Byrne:** Byrne, J. Peter [Associate Professor, Georgetown University Law Center.] “Racial Insults and Free Speech Within the University.” *Georgetown University Law School.* 1991. RP

In the above analysis I have attempted to prove that the Constitution can and should be read to afford universities the authority to prohibit racial in- sults by members of the academic community. **It does not follow from this, however, that every college and university should explicitly proscribe racial insults. Although such a rule might effectively stem verbal abuse, each school must carefully consider whether such regulations would likely be ef- fective in its setting and whether any benefits so gained would exceed the undoubted costs of such regulation of speech.** Permit me to expand on these prudential considerations. **Disciplinary rules are the least effective way that a university can enhance the quality of speech or foster racial tolerance among its members. The educational program must celebrate and instruct its students in the beauty and usefulness of graceful and accurate speech** and writing; a liberal education should leave students intolerant of propaganda and commercial manipula- tion, and competent to directly and forcefully express coherent views as citi- zens. Such teaching is not amoral; the graduate ought freely to prefer the exercise of skill, reflective perception, and an abiding curiosity to desires for acquisition, consumption, and domination. Without the university's consis- tent action on a commitment to reasoned discourse as central to its mission, the university's attempt to prohibit insulting or lewd speech may seem a hyp- ocritical denial of its own failings. **Similarly, prohibiting racial insults will advance racial harmony on a cam- pus only when the university has effectively committed itself to educate lov- ingly the members of every ethnic group**. Although nearly every university admits minority students using criteria that aspire in good faith to be fair, many have failed to transform themselves into truly multi-ethnic institutions. Not to have succeeded at this daunting task does not merit reproach; the university's origins and traditions are explicitly European, growth and ac- commodation to the extent required to create a multi-ethnic community must take time and witness false steps. However, not to have made plain that blacks, hispanics, Asians, Indians, and others who have been excluded in the past are not only now welcome, but are requested to collaborate in shap- ing new university structures and mores so that the benefits of advanced edu- cation will be available without regard to birth and so that the university can continue to spawn for a changing society a cosmopolitan culture based on reason and reflection standing above tribal fears and blind desires, not to have begun this work in earnest merits regret and will provoke anger. **Uni- versities that pass rules against racial insults which are not part of a compre- hensive commitment to ethnic integration will serve only to exacerbate racial tensions. Schools that adopt prohibitions on racially offensive speech ought to en- force them with restraint**. Certainly, when students have sought to intimidate or frighten other students with racial insults, the school should treat this behavior as a fundamental breach of university standards meriting the strongest punitive measures. But often insulting expressions will result from insensitivity or ignorance; complaints about such behavior should be seen as opportunities for teaching, and creative informal measures that make the of- fenders aware of the harmful consequences and injustice of their behavior should be pursued. The school should also provide succor to the victim whose hurt and anger must be acknowledged and meliorated. **But severely punishing ignorant young people for expressions inherited from their parents or neighborhoods may serve to harden and focus their sense of grievance, create martyrs, and prolong racial animosity**. Deans who administer such rules must overcome their personal repugnance at racist speech and enforce the rules for the benefit of the entire community. Controversial interpreta- tive application of the rules should be placed in the hands of faculty and students representative of the entire institution, and the accused, the victim, and the dean should have an opportunity to express their perspectives.

#### Vagueness means no solvency

**Byrne:** Byrne, J. Peter [Associate Professor, Georgetown University Law Center.] “Racial Insults and Free Speech Within the University.” *Georgetown University Law School.* 1991. RP

**A recurrent concern regarding rules against racial insults is their vague- ness and overbreadth. These, of course, were the bases upon which the Uni- versity of Michigan's policy was declared unconstitutional**, although the demonstrated propensity of the school to apply the policy to presumptively protected speech appears to have steered the Court's conclusions on these issues. In general, university disciplinary rules rarely are struck down for vagueness; courts usually permit universities to regulate student conduct on the basis of generally stated norms, so long as they give fair notice of the behavior proscribed. **Courts generally are more strict regarding vagueness in rules that affect speech, in no small part because of the distrust of the competence and motives of the government censor.**

### Calleros

#### Delgado and Yun assume that removing speech codes mean NO PROTECTION for minorities, but there can still be penalties for harassment

**Calleros:** Calleros, Charles R. [Professor of Law, Arizona State University] “Paternalism, Counterspeech, and Campus Hate-Speech Codes.” *Arizona State Law Journal.* Winter 1995. RP

**Delgado and Yun still may have an argument with those, such as Nat Hentoff, who espouse near absolutism in freedom of speech**. **However, the national ACLU, which Delgado and Yun concede typifies the moderate left, has long taken an official position that supports the kind of balance between protection of speech and prevention of harm against minorities and others that Delgado and Yun recommend. In recent years, the national ACLU has reaffirmed this approach by supporting carefully drawn elevated penalties for bias-motivated crimes. n42 It also approves of campus regulation of actions such as "harassment, intimidation and invasion of privacy" while urging campuses to protect most forms of speech and to respond to offensive protected speech with education and counterspeech. n43 Perhaps more tellingly, since 1991, the national ACLU has endorsed the anti-harassment policies of Arizona State University, n44 which permit the utterance of even outrageous academic and political ideas, but which also prohibit various forms of "harassment" in regulations that in many ways are more comprehensive than those espoused by Delgado and Yun**. n45

#### Empirics confirm that counterspeech is effective, and is a precursor to any grassroots movements.

**Calleros:** Calleros, Charles R. [Professor of Law, Arizona State University] “Paternalism, Counterspeech, and Campus Hate-Speech Codes.” *Arizona State Law Journal.* Winter 1995. RP

Delgado and Yun summarize the support for the counterspeech argument by paraphrasing Nat Hentoff: "Antiracism rules teach black people to depend on whites for protection, while talking back clears the air, emphasizes self-reliance, and strengthens one's self-image as an active agent in charge of one's own destiny." **Delgado and Yun also cite to those who believe that counterspeech may help educate the racist speaker by addressing the ignorance and fear that lies behind hostile racial stereotyping. But they reject this speech-protective argument, stating that "it is offered blandly, virtually as an article of faith" by those "in a position of power" who "rarely offer empirical proof of their claims.**" n52 The authors argue that talking back in a close confrontation could be physically dangerous, is unlikely to persuade the racist speaker to reform his views, and is impossible "when racist remarks are delivered in a cowardly fashion, by means of graffiti scrawled on a campus wall late at night or on a poster placed outside of a black student's dormitory door." n53 They also complain that "even when successful, talking back is a burden" that minority undergraduates should not be forced to assume. **In rejecting the counterspeech argument, however, Delgado and Yun cast the argument in its weakest possible form, creating an easy target for relatively summary dismissal**. When the strategies and experiential basis for successful counterspeech are fairly stated, its value is more easily recognized. **First, no responsible free speech advocate argues that a target of hate speech should directly talk back to a racist speaker in circumstances that quickly could lead to a physical altercation.** If one or more hateful speakers closely confronts a member of a minority group with racial epithets or other hostile remarks in circumstances that lead the target of the speech to reasonably fear for her safety, in most circumstances she should seek assistance from campus police or other administrators before "talking back." Even staunch proponents of free speech agree that such threatening speech and conduct is subject to regulation and justifies more than a purely educative response. n55 The same would be true of Delgado's and Yun's other [\*1258] examples of speech conveyed in a manner that defaces another's property or invades the privacy of another's residence. When offensive or hateful speech is not threatening, damaging, or impermissibly invasive and therefore may constitute protected speech, education and counterspeech often will be an appropriate response. n57 **However, proponents of free speech do not contemplate that counterspeech always, or even normally, will be in the form of an immediate exchange of views between the hateful speaker and his target. Nor do they contemplate that the target should bear the full burden of the response. Instead, effective counterspeech often takes the form of letters, discussions, or demonstrations joined in by many persons and aimed at the entire campus population or a community within it. Typically, it is designed to expose the moral bankruptcy of the hateful ideas, to demonstrate the strength of opinion and numbers of those who deplore the hateful speech, and to spur members of the campus community to take voluntary, constructive action to combat hate and to remedy its ill effects. Above all, it can serve to define and underscore the community of support enjoyed by the targets of the hateful speech, faith in which may have been shaken by the hateful speech.** Moreover, having triggered such a reaction with their own voices, the targets of the hateful speech may well feel a sense of empowerment to compensate for the undeniable pain of the speech. **One may be tempted to join Delgado and Yun in characterizing such a scenario as one "offered blandly, virtually as an article of faith" and without experiential support. n60 However, campus communities that have creatively used this approach can attest to the surprising power of counterspeech.** [\*1259] **Examples of counterspeech to hateful racist and homophobic speech at Arizona State and Stanford Universities are especially illustrative. In an incident that attracted national attention, the campus community at Arizona State University ("A.S.U.") constructively and constitutionally responded to a racist poster displayed on the outside of the speaker's dormitory door in February 1991**. Entitled "WORK APPLICATION," it contained a number of ostensibly employment-related questions that advanced hostile and demeaning racial stereotypes of African-Americans and Mexican-Americans. **Carla Washington, one of a group of African-American women who found the poster, used her own speech to persuade a resident of the offending room voluntarily to take the poster down and allow her to photocopy it**. After sending a copy of the poster to the campus newspaper along with an opinion letter deploring its racist stereotypes, she demanded action from the director of her residence hall. The director organized an immediate meeting of the dormitory residents to discuss the issues. In this meeting, I explained why the poster was protected by the First Amendment, and the women who found the poster eloquently described their pain and fears. One of the women, Nichet Smith, voiced her fear that all nonminorities on campus shared the hostile stereotypes expressed in the poster. **Dozens of residents expressed their support and gave assurances that they did not share the hostile stereotypes,** but they conceded that even the most tolerant among them knew little about the cultures of others and would benefit greatly from multicultural education. The need for multicultural education to combat intercultural ignorance and stereotyping became the theme of a press conference and public rally organized by the student African-American Coalition leader, Rossie Turman, who opted for highly visible counterspeech despite demands from some students and staff to discipline the owner of the offending poster. **The result was a series of opinion letters in the campus newspaper discussing the problem of racism**, numerous workshops on race relations and free speech, and overwhelming approval in the Faculty Senate of a measure to add a course on American cultural diversity to the undergraduate breadth requirement. The four women who initially confronted the racist poster were empowered by the meeting at the dormitory residence and later received awards from the local chapter of the NAACP for their activism. n64 Rossie Turman was rewarded for his leadership skills two years later by becoming the first African-American elected President of Associated Students of A.S.U., n65 a student body that numbered approximately 40,000 students, only 2.3 percent of themAfrican-American. **Although Delgado and Yun are quite right that the African-American students should never have been burdened with the need to respond to such hateful speech, Hentoff is correct that the responses just described helped them develop a sense of self-reliance and constructive activism**. Moreover, the students' counterspeech inspired a community response that lightened the students' burden and provided them with a sense of community support and empowerment. Indeed, the students received assistance from faculty and administrators, who helped organize meetings, wrote opinion letters, spoke before the Faculty Senate, or joined the students in issuing public statements at the press conference and public rally. n67 **Perhaps most important, campus administrators wisely refrained from disciplining the owners of the poster, thus directing public attention to the issue of racism and ensuring broad community support in denouncing the racist poster. Many members of the campus and surrounding communities might have leapt to the racist speaker's defense had the state attempted to discipline the speaker and thus had created a First Amendment issue**. Instead, they remained united with the offended students because the glare of the public spotlight remained sharply focused on the racist incident without the distraction of cries of state censorship. **Although the counterspeech was not aimed primarily at influencing the hearts and minds of the residents of the offending dormitory room, its vigor in fact caught the residents by surprise. n68 It prompted at least three of them to apologize publicly and to display curiosity about a civil rights movement that they were too young to have witnessed first hand. This effective use of education and counterspeech is not an isolated instance at A.S.U., but has been repeated on several occasions, albeit on smaller scales**. n70 **One year after the counterspeech at A.S.U., Stanford University responded similarly to homophobic speech.** In that case, a first-year law student sought to attract disciplinary proceedings and thus gain First Amendment martyrdom by shouting hateful homophobic statements about a dormitory staff member. The dean of students stated that the speaker was not subject to discipline under Stanford's code of conduct but called on the university community to speak out on the issue, triggering an avalanche of counterspeech. Students, staff, faculty, and administrators expressed their opinions in letters to the campus newspaper, in comments on a poster board at the law school, in a published petition signed by 400 members of the law school community disassociating the law school from the speaker's epithets, and in a letter written by several law students reporting the incident to a prospective employer of the offending student. The purveyor of hate speech indeed had made a point about the power of speech, just not the one he had intended. He had welcomed disciplinary sanctions as a form of empowerment, but the Stanford community was alert enough to catch his verbal hardball and throw it back with ten times the force. **Thus, the argument that counterspeech is preferable to state suppression of offensive speech is stronger and more fully supported by experience than is conceded by Delgado and Yun.** In both of the cases described above, the targets of hateful speech were supported by a community united against bigotry. **The community avoided splitting into factions because the universities eliminated the issue of censorship by quickly announcing that the hateful speakers were protected from disciplinary retaliation**. Indeed, the counterspeech against the bigotry was so powerful in each case that it underscored the need for top administrators to develop standards for, and some limitations on, their participation in such partisan speech. n72 Of course, the community action in these cases was effective and empowering precisely because a community against bigotry existed. At A.S.U. and Stanford, as at most universities, the overwhelming majority of students, faculty, and staff are persons of tolerance and good will who deplore at least the clearest forms of bigotry and are ready to speak out [\*1262] against intolerance when it is isolated as an issue rather than diluted in muddied waters along with concerns of censorship. Just as the nonviolent demonstrations of Martin Luther King, Jr., depended partly for their success on the consciences of the national and international audiences monitoring the fire hoses and attack dogs on their television sets and in the print media, n73 the empowerment of the targets of hateful speech rests partly in the hands of members of the campus community who sympathize with them. One can hope that the counterspeech and educational measures used with success at A.S.U. and Stanford stand a good chance of preserving an atmosphere of civility in intellectual inquiry at any campus community in which compassionate, open minds predominate.

#### Speech codes are comparatively less likely to combat hate than counterspeech

**Calleros:** Calleros, Charles R. [Professor of Law, Arizona State University] “Paternalism, Counterspeech, and Campus Hate-Speech Codes.” *Arizona State Law Journal.* Winter 1995. RP

On the other hand, counterspeech by the targets of hate speech could be less empowering on a campus in which the majority of students, faculty, and staff approve of hostile epithets directed toward members of minority groups. One hopes that such campuses are exceedingly rare; although hostile racial stereotyping among college students in the United States increased during the last decade, those students who harbored significant hostilities (as contrasted with more pervasive but less openly hostile, subconscious racism) still represented a modest fraction of all students. **Moreover, even in a pervasively hostile atmosphere, counterspeech might still be more effective than broad restrictions on speech. First, aside from the constitutional constraints of the First Amendment, such a heartless campus community would be exceedingly unlikely to adopt strong policies prohibiting hateful speech. Instead, the campus likely would maintain minimum policies necessary to avoid legal action enforcing guarantees of equal educational opportunities under the Fourteenth Amendment** n75 or federal antidiscrimination statutes such as Title VI n76 or Title IX. **Second, counterspeech even from a minority of members of the campus community might be effective to gradually build support by winning converts from those straddling the fence or from broader regional or national audiences. Such counterspeech might be particularly effective if coupled with threats from diverse faculty, staff, and students to leave the university for more hospitable environments**; even a campus with high levels of hostility likely would feel pressures to maintain its status as a minimally integrated institution. n78 **The A.S.U. and Stanford examples illustrating the efficacy of counterspeech also lend support to the argument that "free speech has been minorities' best friend . . . [as] a principal instrument of social reform." n79 In both cases, demonstrations, opinion letters, and other forms of counterspeech dramatically defined the predominant atmosphere on each campus as one that demanded respect and freedom from bigotry for all members of the community;** it is doubtful that passage of a speech-restrictive policy could have sent a similar message of consensus any more strongly. Moreover, in the A.S.U. case, the reasoned counterspeech, coupled with the decision to refrain from disciplining the hateful speaker, persuaded the Faculty Senate to pass a multicultural education proposal whose chances for passage were seriously in doubt in the previous weeks and months. n80 The racist poster at A.S.U. may have been a blessing in disguise, albeit an initially painful one, because it sparked counterspeech and community action that strengthened the campus support for diversity.

#### Speech codes chill black radical activism – even if enforced fairly, black voices are chilled.

**Calleros:** Calleros, Charles R. [Professor of Law, Arizona State University] “Paternalism, Counterspeech, and Campus Hate-Speech Codes.” *Arizona State Law Journal.* Winter 1995. RP

The second "paternalistic objection," that "antiracism rules will end up hurting minorities," n81 also has more substance in recent experience than Delgado's and Yun's analysis suggests. **Although they may be correct that prosecutions of minority group members for violating a campus hate-speech code "seem rare," n82 two examples serve to illustrate the importance of allowing members of the campus community, including members of minority groups, to engage in speech that may be offensive to others. The first example shows how several outspoken African-American students benefitted from the atmosphere of free speech and counterspeech at A.S.U. after the racist poster incident described in part A above. Vernard Bonner, the African-American leader of Students Against Racism, vented his [\*1264] outrage over the racist poster with an opinion letter that some complained reflected racist stereotyping of whites. n83 Although his own speech was offensive to some and sparked criticism, he was secure in his right to speak his mind without fear of censorship or discipline**. Similarly, one year after he led the counterspeech to the racist poster and a year before being elected student body president, Rossie Turman reaffirmed his support for A.S.U.'s policies supporting free speech, precisely because those policies protected his right to strongly express his own views. n84 **In the same year, a militant African-American student, Ashahed Triche, expressed his more radical views on race relations in a regular column of the campus newspaper, regularly offending white readers**. Though some of the offended readers engaged in their own counterspeech and even recommended that the newspaper drop his column, n85 he continued to express his provocative views free from censorship. **A campus policy that prohibited offensive, racially hostile speech presumably would have bottled up these emerging African-American speakers along with their white counterparts. Perhaps the result of such a policy would be a kinder, gentler campus, but these African-American students were willing to sacrifice subtlety in their speech to draw attention to their perspectives.**

#### Allowing racist speech makes it easier to identify racists – driving speech underground means we don’t learn about it – empirics prove

**Calleros:** Calleros, Charles R. [Professor of Law, Arizona State University] “Paternalism, Counterspeech, and Campus Hate-Speech Codes.” *Arizona State Law Journal.* Winter 1995. RP

Delgado and Yun reject the argument that "forcing racists to bottle up their dislike of minority group members means that they will be more likely to say or do something hurtful later." n94 Instead, they argue that "once the speaker forms the category of deserved-victim, his or her behavior may well continue and escalate to bullying and physical violence." n95 Perhaps the only thing certain about the debate on this point is that universal statements are impossible to support. Of course, it is difficult to deny that the "pressure valve" theory has validity in some contexts. Any person who has performed a substantial amount of mentoring or counseling has witnessed a troubled individual experience a release of tension when finding an audience before which to verbally vent her frustrations. In many cases, such a release reduces the speaker's need to verbally or physically "vent" on others in a confrontational manner. And I have more than once witnessed an offensive speaker who intentionally pressed the limits of his listeners' sensibilities simply to test his right to speak freely; once his right was established and affirmed, his propensity to offend declined, and he even found occasions to explore positions reflecting greater sensitivity and tolerance toward others. On the other hand, intuition and common experience support the persuasiveness of Delgado's and Yun's argument as applied to at least some hateful speakers. One cannot eliminate the possibility that an extremist with a propensity for hostile conduct may be emboldened by his own hostile speech or that of others. n96 Indeed, one can imagine a racist "painting himself into a corner" by taunting a target in front of the speaker's similarly [\*1269] racist buddies and feeling personal or peer pressure to act violently when the target responds in kind. **On balance, then, I suspect that the pressure-valve theory against restrictions on speech applies with varying force in different circumstances and that Delgado's and Yun's challenge to it is a fair one. However, they have not adequately addressed another potential problem of driving hateful speech underground: the missed opportunity to learn from and react appropriately to the hateful message**. When such opportunities are embraced, a campus may not only preserve the autonomy of the hateful speaker but also realize Mills's ideal of enjoying "the fuller understanding of truth which comes from its conflict with error." In a yet more recent article in which **Delgado and Yun respond to the neoconservative case against hate-speech regulations, n98 the authors concede that "all other things being equal, the racist who is known is less dangerous than the one who is not**." n99 They argue, however, that a "cured, or at least deterred" racist is less dangerous still n100 and that rules against racially offensive speech and the consequent disciplinary hearings would not preclude educational measures designed to analyze problems of race or to address their root causes. Of course, rules that restrain speech carry their own educational message, a message of censorship, which should be reserved for the most egregious abuses of speech. In some cases, moreover, an educational response alone is more constructive and healing than one that is coupled with prior restraint of speech or subsequent discipline. Indeed, disciplinary proceedings may dilute the educational measures by diverting attention from the inquiry into bigotry and redirecting it to an equally newsworthy controversy about restraints on speech**. For example, in the case described in part B above of the racist poster at A.S.U., the campus community used the racist poster as a "wake-up call" about the need for multicultural diversity.** n102 In initial discussions about the poster, students concluded that it reflected fear and ignorance and that it revealed a general gap in the education of many students. The need for multicultural education consequently became a theme of the campus counterspeech, which in turn helped to persuade the Faculty Senate to [\*1270] include a course in American diversity as part of the undergradu- ate breadth requirement. **Had the dormitory banned racially offensive posters, the speaker might have been deterred from revealing his bigotry**, or a staff member might have removed the poster before it was found by the four African- American women who exposed it to the entire campus community. The lesson of the poster was a painful one, but the campus community learned from it and acted on it. The campus affirmatively used the hateful speech to underscore the need for multicultural education, a truth that was underscored by its collision with the error of hostile racial stereotyping. Moreover, the campus was successful in its educational response precisely because it kept public attention focused on the problem of bigotry and ignorance; it did this by avoiding any action that would raise a competing issue regarding protection of speech. Delgado and Yun argue that rules against hateful speech will not entirely deprive campuses of information about bigotry, because they are not likely to suppress all hate speech. However, it is possible that such rules would provoke the least dangerous kinds of speakers to spew offensive speech: those who use outrageous language simply to make a point about the breadth of their freedom of speech. n103 **A speaker with a more troubling agenda might observe the rule against bigoted speech but engage in more injurious conduct that leaves less of a paper trail than does a hateful poster or other public utterance. For example, in another case on the A.S.U. campus, residents of a dormitory complained about a partially nude female pinup displayed on the outside of a resident's door**. The display was not obscene under legal standards n104 but was offensive to many who saw it. Two female staff members responded by organizing a dormitory meeting in which the students could air their views on the matter. **Unfortunately, before the meeting could take place, university police confiscated the poster, thus violating free speech** by singling out the offensive poster among many other similarly displayed posters on the basis of its content. n105 Within a week, the police department admitted its error, returned the poster (which the resident chose not to [\*1271] display again) and stated that it would leave such matters to the residence hall staff in the future. In my discussions of this event with students, **I have suggested that the poster, though offensive to many, served an important educative purpose: it warned other residents of the dormitory about the apparent values of the person engaging in the display. If a student objectified women to such a degree that he displayed a female pinup on the outside of his door, the most conspicuous forum from which to exclaim his identity to every passerby, one could reasonably wonder -- and a group discussion at the dormitory could examine -- whether he was likely to display any respect for the autonomy of women who visited his room. The display on his door arguably served as a warning to women on his floor:** "Until you learn more about this person, enter at your own risk and with your guard up." **A rule prohibiting such a display might have deterred him from revealing his values, thus depriving a trusting visitor of valuable information or a residence hall advisor of the incentive to secure assurances of proper behavior from him**. In sum, bigotry or the potential for discrimination is sometimes best revealed. On the other hand, the information value of speech that warns of a speaker's bigotry is not so great that a campus would affirmatively encourage its bigoted students to reveal their most hostile feelings at every turn. As discussed in part IV below, A.S.U. addresses hateful speech partly through educational efforts that encourage all members of campus to avoid hostile speech and to discuss the controversial issues of the day in a civil, intellectual manner befitting an institution of higher learning. Perhaps the most that can be said is that a committed campus community unafraid of hard work and challenges can use the occasion of hateful speech to make positive strides toward easing the underlying hate and securing the legitimate needs of the potential targets of the speech. Aside from that, I am forced to return to my earlier conclusion that universal statements on this point are impossible to support. Some hateful speech provides a valuable warning or an impetus for progress that comes from greater understanding of truth tested in collision with error, thus helping to justify the current constitutional policy against government regulation on principles of self-government and the search for truth. Other hateful speech may do no more than cause anger or pain, justifying current policy only on the principle of respect for the autonomy of a speaker who is himself intolerant. Both cases [\*1272] justify counterspeech and educational measures. Although the latter case may provide some support for greater government regulation, the impossible task of distinguishing between the two on this basis in a formal policy counsels restraint, particularly when counterspeech and community action can be so empowering and constructive.

#### No paternalism or victim-blaming – counterspeech is brought about by the community and not just the student

**Calleros:** Calleros, Charles R. [Professor of Law, Arizona State University] “Paternalism, Counterspeech, and Campus Hate-Speech Codes.” *Arizona State Law Journal.* Winter 1995. RP

One of the more interesting elements of the Delgado and Yun response to moderate liberals' objections to hate- speech regulations is their characterization of those objections as "paternalistic," which they define as: "a justification for curtailing someone's liberty that invokes the well-being of the person concerned, that is, that requires him or her to do or refrain from doing something for his or her own good." n108 In addition, they suggest that proponents of these arguments are disingenuous, because the proponents advance these arguments "ostensibly in minorities' best interest" at least in part "to discourage reform." This underlying theme raises an intriguing question: Which approach to campus hate speech best advances the cause of civil rights and best serves the interests of the targets of the speech -- the aggressive regulation of speech apparently espoused by Delgado and Yun, or the combination of regulation, counterspeech, education, and other community action described in part II above and part IV below? Delgado and Yun may not be unreasonable in characterizing "18-year old black undergraduates at predominantly white campuses" as "some of the most defenseless members of society," n110 but the question remains how best to empower them. **Carla Washington and Rossie Turman, the African-American students at predominantly nonminority A.S.U., certainly didn't remain defenseless in confronting the racist poster in the manner described in part II.A above. They displayed the courage and initiative to use their own speech to take control of the event**. Moreover, during his undergraduate years, Mr. Turman rose from a supposedly "defenseless black student" to student body president. To be sure, these students received support from the university in shedding the reality or image of their vulnerability. Carla Washington told me after the event that she was prepared to challenge the poster directly and constructively partly because of her prior training in a university program [\*1273] known as "Leadership 2000." In addition, she and Rossie Turman received administrative support in their counterspeech from faculty, staff, and administrators ranging from the dormitory's residence hall advisor to the university president. n111 Moreover, both in this case and in the Stanford incident described as well in part II.A above, all potential targets of such hate speech received a tremendous vote of support from the campus communities whose collective voices morally defeated the messages of hate in a way that no disciplinary proceeding could have. **By demonstrating that the hateful speakers had few allies and that the targets of their speech were part of a much larger, loving, and supportive community, minorities were welcomed to campus in a way that controversial discipline of the hateful speakers would not have guaranteed. Of course, some targets of offensive speech will not be as ready as were Ms. Washington and Mr. Turman to assume the mantles of leadership and empowerment. But that simply means that the university community must be prepared to provide them a greater level of support, in some cases by assuming a greater share of the burden of engaging in the counterspeech. For example, in the Stanford incident described in part II.A above, the target of the hateful speech bore little, if any, of the burden of the community's mammoth campaign of counterspeech**. Indeed, he wrote a magnanimous opinion letter to the campus newspaper in which he called for careful analysis of the incident rather than simplistic condemnation of the speaker as homophobic. n112 **In other cases, a target of hateful speech may need to secure support services to deal with the pain or anxiety caused by the speech**, as well as receive advice about how best to confront or avoid the speech. Partly in response to such a need, A.S.U. has created a Campus Environment Team ("CET"). As described more fully in part IV below, the CET promotes both free speech and diversity through educational measures designed to combat hate and encourage civil discourse, through monitoring of harassment on campus, and through its referral services. In exercising its referral function, the CET quickly can direct a student in need of support services to any one or more of dozens of offices on campus for anything from filing a police report to receiving counseling. Victims of hateful speech know that they can gain a supportive audience before the CET to convey their sense of injury or outrage and to receive support. The response to the racist poster incident at [\*1274] A.S.U. is an example of such support by the CET: as Chair of the CET that year, I helped to organize the initial meeting at the dormitory, helped convince other student groups to support Mr. Turman in his counterspeech rather than demand discipline, joined others in speaking out against the poster in Mr. Turman's press conference and public rally, and addressed the Faculty Senate in the aftermath of the incident, carrying the message of the need for multicultural education. n113

#### Speech codes affect very little speech, and if they go further, they get struck down.

**Calleros:** Calleros, Charles R. [Professor of Law, Arizona State University] “Paternalism, Counterspeech, and Campus Hate-Speech Codes.” *Arizona State Law Journal.* Winter 1995. RP

Unfortunately, our solutions may be empty, because it is fairly simple for us to draft a code of conduct that prohibits hate speech and then walk away from the problem. **If we guess wrongly in drawing the line between protected and unprotected speech, a court will declare the policy unconstitutional, and the students we seek to protect will have lost another battle. n117 If we draft more cautiously and neutrally prohibit only speech that currently is subject to constitutional regulation, n118 we sanction relatively little hateful speech. Either way, we do little in the long run to affect the climate on campus for diversity and civility. Real progress comes only at the price [\*1276] of an immense amount of nonscholarly elbow grease as hundreds of selfless members of a campus community work year-round with students to provide education, support, and the tools for student growth and activism.**

### Friedersdorf – Free Speech is no Diversion

#### The Aff doesn’t claim that hate speech is OK, but that it should be condemned by sutdents themselves, not by administrators – empirics confirm this approach does work.

**Friedersdorf:** Friedersdorf, Conor [Friedersdorf is a staff writer at The Atlantic, where he focuses on politics and national affairs. He lives in Venice, California, and is the founding editor of The Best of Journalism, a newsletter devoted to exceptional nonfiction.] “Free Speech Is No Diversion.” *The Atlantic.* Novebmer 2015. RP

As I see it, when middle-aged adults indulge those reactions as reasonable rather than declaring them to be overwrought, they are doing students a disservice. Instead of empowering them they are indulging them, robbing them of resilience they’ll need to navigate society as adults. Does Cobb disagree? Is he not concerned by those reactions? Does he agree with the notion that **Yale students would be better off personally and more effective advocates of social justice if they started acting more like adults? Cobb reports that “Erika, the associate master of the college, wrote an e-mail encouraging students to treat Halloween costumes that they find racially offensive as a free-speech issue.” That fundamentally misunderstands the thrust of her position. In fact, she wrote that while one could think about costumes through the lens of free speech, she wanted to look at them “from a totally different angle.” She spent practically the whole email doing just that, then briefly mentioned, near the very end, that her husband had said, “if you don’t like a costume someone is wearing, look away, or tell them you are offended. Talk to each other. Free speech and the ability to tolerate offence are the hallmarks of a free and open society.” Notice that** her approach is not inconsistent with students harshly stigmatizing blackface. **As I see it, if Yalies wear blackface on Halloween, it should be handled exactly as it was handled in 2007. In the Yale Daily News, Joshua Cox and Sharifa Love concisely explained the history of blackface and why it is offensive**. Afterward, they mused about why a white person would possibly incorporate it in a costume: One conclusion we’ve come to is that some white people are passively ignorant of the history of oppression and pain associated with minstrelsy and blackface. Because whiteness is normative, race is not as salient for white people as it is for black people. From early childhood, black children are forced to navigate a racially charged landscape, controlled by people who do not look like them. Black children grow up considering their blackness with every move they make, whereas white children are never forced to consider race because theirs is considered normal. This may explain why some white people are culturally ignorant of the possible ramifications of blackface and other racist actions. This passive ignorance is not an acceptable excuse. Another conclusion we’ve reached is that some white people are consciously, willfully ignorant of the cultural ramifications of their actions. These individuals have some sense of the possible offensiveness of their actions, yet disregard them and decide that they’d rather continue existing in their own normative sphere. This problematic disownment of personal responsibility preempts engagement in offensive actions while shirking social responsibility. This brand of ignorance is more offensive than passivity because one understands the sociocultural ramifications of actions like blackface, but completely ignores them. The last conclusion we’ve come to is that the most heinous brand of ignorance is that of the white person who knowingly takes culturally sensitive material and wields it in an insensitive fashion to openly mock minorities. Those who understand the ramifications of actions like blackface, yet purposefully engage in such actions for the sake of tasteless humor, are utterly despicable. Such premeditated actions are akin to the use of racial epithets because, like slurs, blackface is meant to demean and dehumanize. White people who knowingly commit such actions do so easily from the safety of the racial majority, without regard for those who face the difficulty of life outside of the normative assumption of whiteness. **Their analysis is impressive. And it suggests that given the autonomy to shape campus culture, Yale students are as capable of promulgating norms that are opposed to racism as administrators. Because they were empowered to do so on their own, the students presumably accrued knowledge and experience that will serve them well in the future. Yet people arguing for the relative benefits of that demonstrably workable approach are cast as either racially insensitive or ignorant of nuances**. In fact, they’re as fully committed to the well-being of students, including those who suffer from racism, as anyone else, but disagree with some student activists and their ideological allies in the press about the best way forward. That is hardly surprising. Examine any cause taken up by 18-year-olds on a college campus and you’ll find ideologically diverse observers who think that they’re mistaken about various assumptions and tactics. I share the notion that young people with stories about racial injustice should be heard, and that their descriptions of their experiences are owed a degree of deference, especially by those of us who’ve never navigated college as the member of a minority group. But thoughtless or patronizing deference can be prejudicial, too; and when activist assumptions and tactics elicit intense disagreement even among members of groups victimized by the racism at issue, the notion that deference to “students of color” is even possible requires one to pretend that they constitute a monolithic group who uniformly agree. Little wonder that black, Hispanic, and Asian American collegians who depart from progressive orthodoxy often keep quiet, knowing that they’ll be called race-traitors (as one student at Yale was just called) if they are more vocal. What should be done about racist acts at Yale and and the University of Missouri? I’ll hazard some suggestions. A student who defaces a dorm with an excrement swastika should be expelled. **Anonymous bigots who yell racial slurs from a pickup truck should be condemned**. A frat that discriminates on the basis of race at its parties should have its charter revoked by whatever national organization conferred it. Anonymous threats should be reported to authorities; if possible, the perpetrators should be jailed; and the threatened students should be given protection by campus security.

### Friedersdorf – The Glaring Evidence

#### Free speech is under attack from every direction – colleges shut down controversial speakers and impose codes on students to quash dissent

**Friedersdorf:** Friedersdorf, Conor [Friedersdorf is a staff writer at The Atlantic, where he focuses on politics and national affairs. He lives in Venice, California, and is the founding editor of The Best of Journalism, a newsletter devoted to exceptional nonfiction.] “The Glaring Evidence That Free Speech Is Threatened on Campus .” The Atlantic. March 2016. RP

At a recent Intelligence Squared debate, **an audience filled an auditorium at Yale University to weigh the timely proposition, “Free speech is threatened on campus.” The debate concerned higher education generally, not just the host institution. And at the event’s conclusion, having heard arguments on both sides of the question, 66 percent of the crowd agreed: free speech is threatened.** That represented a 17-point shift from a poll taken as the event began. The evidence is that persuasive. One of the losers in the debate was Professor Shaun Harper of the University of Pennsylvania, who heads its Center for the Study of Race and Equity in Education. He began by noting that “there has been a significant increase in the demand for our campus climate work” since last semester’s protests. In fact, he added, “this past December, we brought together 8,000 college presidents and other senior leaders who came to us for guidance on how to respond to racism on their campuses.” With that background, I expected Professor Harper to have a broad sense of how common speech restrictions are at American colleges and universities. And I assumed that he would offer arguments for the position that they do not threaten free speech. I was wrong on both counts. Late in the event, he declared, “I don't want anyone's speech to be suppressed in any setting.” The root of the disagreement was his belief that little speech is restricted. And earlier in his remarks, Harper declared that while colleges may ask students to voluntarily limit their speech in various ways, like not wearing offensive costumes, “I invite our opponents to present us more than a handful of written, institutional policies––where it's been put in writing that you can't say certain things. You can't wear certain costumes. Sure, students would be encouraged to do or not do something. But I, as a higher-education scholar who studied thousands of colleges and universities, have never seen a written institutional policy.” That statement is baffling. The Foundation of Individual Rights in Education keeps track of colleges that have speech restrictions, rating each institution green, yellow, or red. To receive the worst rating, a college must have at least one policy “that both clearly and substantially restricts freedom of speech.” That threshold is met only when a policy “unambiguously infringes on what is or should be protected expression” in a way that is “obvious on the face of the policy and does not depend on how the policy is applied.” The University of Pennsylvania, where Harper teaches, earns the best rating from FIRE, green, for having policies that “normally protect free speech.” Institutions with “red light” ratings for policies that unambiguously impinge upon expression include the following: That is only the beginning. I trust that I needn’t run through D, E, an F colleges to hammer home the ubiquity of written rules that limit what one can express. Even if Professor Harper were to defend some of those rules, it beggars belief to think that he could run through colleges beginning with G, H, I, J, K, L, M, N, O, and P and still fall short of his “handful of written, institutional policies” threshold, let alone his claim to have “never seen” one. What’s more, a written policy doesn’t determine if free expression is protected or violated in practice. And one needn’t search long to find widespread examples of free speech being threatened or assaulted outright. To cite just one example, since Harper brought up the matter of costume controversies: UCLA is a public institution that is bound by the First Amendment; as such, it has no written policy banning students from wearing offensive costumes. Nevertheless, administrators at the campus suspended a fraternity for holding a “Kanye Western” theme party, where attendees dressed like the famous rapper and his celebrity wife, Kim Kardashian. Later in the debate, during a back and forth with Wendy Kaminer, who was arguing that free speech is threatened on campus, Harper said: Wendy, it could be that maybe we're talking to completely different students and hearing completely different things, because quite honestly, when we have students in our studies who are talking with us about the realities of race on their campuses... when we hear students of color unpack these painful stories and these microaggressions and stereotypes and other things that have happened to them, we ask them, ‘What is it that you want the institution to do?’ Never once, not once have I heard them say anything about a speech code. I don’t doubt Harper's account of his own research. But I fail to understand how any scholar who takes the campus climate and last semester’s protests as a core focus of their research could miss student demands to punish speech. The Wall Street Journal reported on a survey of 800 college students that found 51 percent favored speech codes. **Yale protestors formally demanded the removal of two professors from their jobs in residential life because they were upset by an email one of them wrote. Missouri law students passed a speech code that Above the Law called Orwellian. Amherst students called for a speech code so broad that it would’ve sanctioned students for making an “All Lives Matter” poster. At Duke, student activists demanded disciplinary sanctions for students who attend “culturally insensitive” parties, mandatory implicit-bias training for all professors, and loss of the possibility of tenure if a faculty member engages in speech “if the discriminatory attitudes behind the speech**,” as determined by an unnamed adjudicator, “could potentially harm the academic achievements of students of color.” At Emory, student activists demanded that student evaluations include a field to report a faculty member’s micro aggressions to help ensure that there are repercussions or sanctions, and that the social network Yik Yak be banished from campus. **Activists at Wesleyan trashed their student newspaper then pushed to get it defunded because they disagreed with an op-ed that criticized Black Lives Matter**. Dartmouth University students demanded the expulsion of fraternities that throw parties deemed racist and the forced a student newspaper to change its name. Need I go on? Harper’s ally in the debate, the Yale philosophy Professor Jason Stanley, didn’t perform any better. During portions the event, he claimed that folks on the other side, who say free speech is under threat, aren’t really engaged in a debate about free speech––he said the real debate is about racism and anti-racism and about leftism. In this telling, free speech is being invoked as a cover, in service of less- sympathetic agendas. That grossly distorted the positions taken by his opponents at the Intelligence Squared debate. And the broader claim about free-speech defenders—which is lamentably common in public discourse on the subject—can be refuted a dozen different ways. Here’s one: Many college newspapers are struggling with free- speech issues that have nothing to do with race or leftism, as David Wheeler reported. Or consider another narrow area of campus expression that is under threat: the formal speech, delivered to a broad audience. We’ll restrict our “threat survey” to a single year. In 2015 alone, Robin Steinberg was disinvited from Harvard Law School, the rapper Common was disinvited from Kean University, and Suzanne Venker was disinvited from Williams College. Asra Nomani addressed Duke University only after student attempts to cancel her speech were overturned. UC Berkeley Chancellor Nicholas Dirks participated in an event on his own campus that student protestors shut down. Speakers at USC needed police to intervene to continue an event. Angela Davis was subject to a petition that attempted to prevent her from speaking at Texas Tech. The rapper Big Sean faced a student effort to get him disinvited from Princeton. Bob McCulloch faced a student effort to disinvite him from speaking at St. Louis University. William Ayers was subject to an effort to disinvite him from Dickinson School of Law. Harold Koh faced a student effort to oust him as a visiting professor at New York University Law School. That list includes speakers from the right and the left. It involves several controversies that have nothing to do with antiracism. How many examples are needed to persuade Stanley that there is a problem? Because I only stopped listing them to avoid being tedious. Those examples are a mere subset of 2015 efforts to censor speakers based on their viewpoints. There are still more from 2014. Further roundups could be written about 2013, 2012, and beyond. Speech is frequently threatened. Speeches are regularly disrupted. Some are cancelled every year. To perceive no threat is to ignore reality. Or forget big speeches and look to another example of left-leaning speech that is threatened. As Glenn Greenwald wrote at The Intercept, “One of the most dangerous threats to campus free speech has been emerging at the highest levels of the University of California system, the sprawling collection of 10 campuses that includes UCLA and UC Berkeley. The university’s governing Board of Regents, with the support of University President Janet Napolitano and egged on by the state’s legislature, has been attempting to adopt new speech codes that— in the name of combating ‘anti-Semitism’—would formally ban various forms of Israel criticism.” For now, no such speech code has been adopted. Does Stanley deny that the powerful, politically connected forces pushing for it are a threat to speech on campus? There are still more examples. Here is a Marquette professor whose tenure was threatened over a blog post. Two years ago, I wrote about the NYPD’s efforts to spy on Muslim students using undercover agents for no reason other than their religion, an effort that spanned months and produced zero leads. Anyone who doubts that this abhorrent profiling chilled the speech of an ethnic-minority group should inform themselves about their understandable reaction to discovering that government spies were in their midst. **To sum up: free speech on campus is threatened from a dozen directions. It is threatened by police spies, overzealous administrators, and students who are intolerant of dissent. It is threatened by activists agitating for speech codes and sanctions for professors or classmates who disagree with them. It is threatened by people who push to disinvite speakers because of their viewpoints and those who shut down events to prevent people from speaking**. Harper and Stanley were unpersuaded that free speech is under threat not because they defend speech codes or sanctions––both say outright at different times that they are for untrammeled speech––but because they are blind to the number and degree of threats to speech.

#### This dooms quality of education – students and professors are chilled from ever discussing controversial subjects

**Friedersdorf:** Friedersdorf, Conor [Friedersdorf is a staff writer at The Atlantic, where he focuses on politics and national affairs. He lives in Venice, California, and is the founding editor of The Best of Journalism, a newsletter devoted to exceptional nonfiction.] “The Glaring Evidence That Free Speech Is Threatened on Campus .” The Atlantic. March 2016. RP

And this whole discussion has been restricted to documented, overt threats to speech. **Chilling effects are harder to quantify or cite, but they are real. Professors and students see those around them being punished for their viewpoints and decide to hold their tongues rather than speak their minds.** Stanley denies that this is a significant problem. **And yet, last semester, without looking very hard, I found and spoke to tenured and non-tenured professors and students at Yale, his own institution, who told me that their speech was chilled. They feared that their place at the school would be jeopardized if they opined honestly about campus controversies; or did not want to be targets of intolerant activists like the ones who spat on lecture attendees because the activists disagreed with words spoken at the lecture.**

### Delgado and Yun

#### Teachers hate speech isn’t constitutionally protected

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “Pressure Valves and Blooded Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulations.” *California Law Review.* Volume 84. July 1994. RP

**In Canada, two recent decisions also upheld the power of the state to prohibit certain types of offensive expression when they cause societal harm. In Regina v. Keegstra, a teacher had described Jews in disparaging terms to his pupils and declared that the Holocaust did not take place. The Supreme Court of Canada upheld the national criminal code provision under which the defendant was charged**. The court emphasized that this type of hate speech harms its victims and society as a whole, sufficiently so to justify criminalizing it.' **In Regina v. Butler4, 1 the Supreme Court of Canada reversed a trial court dismissal of criminal pornography charges, based on the social harm caused by the speech and the minimal impairment of legitimate speech that the prohibition presented.42 Both decisions are notable because Canada's legal and free speech traditions are similar to those of the United States, and because the Canadian Charter protects speech in terms similar to those of its United States counterpart.**

### Demos

#### Unlimited campaign spending isn’t constitutionally protected speech.

**Demos:** Demos [Organization and activist group] “SUPREME COURT ALLOWS SPENDING LIMITS FOR STUDENT GOVERNMENT ELECTIONS AT UNIVERSITY OF MONTANA, REJECTING FIRST AMENDMENT CHALLENGE.” January 2008. RP

**The Supreme Court today turned back a constitutional challenge to spending limits for student government campaigns at the University of Montana**, denying review of a June 2007 ruling by the Ninth Circuit that upheld the limits. **The Supreme Court's action is a victory for the Associated Students of the University of Montana ("ASUM") and the University, which argued that the limits on campaign spending serve to assure all students, regardless of their financial circumstances, an equal opportunity to win election to student government**. Brenda Wright, Legal Director of Demos, a non-profit organization that assisted in defending the University's spending limits, called the ruling '"a victory for fair elections and educational opportunity," stating "**the** **First Amendment was never designed to make student government participation a function of a student's wealth**." The case was brought in 2004 by former UM student Aaron Flint, who exceeded the $100 spending cap in his effort to win a seat on the ASUM Senate and was disqualified from taking his seat as a result of the violation. A nationally prominent opponent of campaign finance regulation, James Bopp, Jr., represented Flint and argued that the First Amendment guaranteed Flint the right to spend unlimited sums in his quest for a student government seat. The Ninth Circuit, however, found ample justification for ASUM's campaign limits, observing: "**Imposing limits on candidate spending requires student candidates to focus on desirable qualities such as the art of persuasion, public speaking, and answering questions face-to-face with one's potential constituents**. Students are forced to campaign personally, wearing out their shoe-leather rather than wearing out a parent's--or an activist organization's--pocketbook." **The Supreme Court's ruling today means that the Ninth Circuit's decision will stand as the leading appellate precedent on the constitutionality of rules designed to foster fair access to student government participation**. The Ninth Circuit includes Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington. Demos attorneys Brenda Wright and Lisa J. Danetz joined David Aronofsky, University of Montana Legal Counsel, in defending the University's campaign spending limits in the Supreme Court.

### Moynihan

#### Speech codes are used to force professors to teach what the authorities want – they only suppress freedom.

**Moynihan:** Moynihan, Donald P. [Contributor, The New York Times] “Who’s Really Placing Limits on Free Speech?” *The New York Times.* January 2017. RP

MADISON, Wis. — **At least three times in the past six months, state legislators have threatened to cut the budget of the University of Wisconsin at Madison for teaching about** [**homosexuality**](http://host.madison.com/wsj/news/local/senator-warns-uw-class-essay-on-gay-sex-could-impact/article_6bc0560c-95c5-5a79-90a4-3742b88344bf.html)**,** [**gender**](http://host.madison.com/ct/news/local/education/university/uw-madison-s-men-s-project-program-on-masculine-identity/article_4b0530fa-c55c-5a58-87fd-79c708b60927.html) **and** [**race**](http://www.jsonline.com/story/news/education/2016/12/21/gop-lawmakers-demand-uw-madison-drop-problem-whiteness-course/95694610/)**. As a faculty member who focuses on how public organizations are managed, I hear a great deal about the dangers of political correctness in higher education**. Several of Wisconsin’s [elected officials](http://www.rightwisconsin.com/opinion/perspectives/a-free-speech-challenge-to-the-uw-system) have joined the growing chorus of demands for better protections for free speech on campus, even as they fail to recognize how their own politicized approach to managing campuses poses a much more fundamental risk to free speech. For example, Steve Nass, a state senator from Whitewater, has [urged](http://host.madison.com/ct/news/local/education/university/uw-students-fire-back-at-state-sen-steve-nass-over/article_9a7bd0ac-084d-5254-a7d8-1cd59a21600c.html) university leaders not to give way to “the political correctness crowd demanding safe spaces, safe words, universal apologies for hurt feelings, and speech/thought police.” But last July, Senator Nass also sent a letter to university leaders to complain about an “offensive” essay assignment on gay men’s sexual preferences. A few days ago he said that a university program that explored masculinity “[declares war on men](http://host.madison.com/ct/news/local/education/university/uw-madison-s-men-s-project-program-on-masculine-identity/article_4b0530fa-c55c-5a58-87fd-79c708b60927.html)” after asking, “Will we have the courage to reform the U.W. system in the 2017-19 biennial budget?” Senator Nass is not alone. A state representative heading a committee that oversees higher education [asked for](http://www.cnn.com/2016/12/23/health/college-course-white-controversy-irpt-trnd/) [the cancellation](http://www.cnn.com/2016/12/23/health/college-course-white-controversy-irpt-trnd/) of a course that examined white identity called “The Problem of Whiteness” and the dismissal of its instructor. The representative, Dave Murphy, said the course was “adding to the polarization of the races in our state.” If the university “stands with this professor, I don’t know how the university can expect the taxpayers to stand with U.W.-Madison.” Mr. Murphy also promised to direct his staff to screen courses in the humanities “to make sure there’s legitimate education going on.” **These examples show what’s being left out of a narrative about a crisis of campus speech that is becoming widely accepted**. In this story, there is a battle between the traditional values of free speech and identity politics, with tolerance for disagreement being erased by an insistence on recognizing [micro-aggressions](http://www.nytimes.com/2016/09/07/us/campuses-cautiously-train-freshmen-against-subtle-insults.html), [safe spaces](http://www.nytimes.com/2015/03/22/opinion/sunday/judith-shulevitz-hiding-from-scary-ideas.html) and [trigger warnings](http://www.nytimes.com/2016/09/11/opinion/trigger-warnings-safe-spaces-and-free-speech-too.html). **Controversial speakers are heckled or disinvited. It’s true that these battle lines are drawn across all campuses to one degree or another, but what many people don’t realize is that they are the most pressing concerns only for elite private institutions like** [**Oberlin**](http://www.newyorker.com/magazine/2016/05/30/the-new-activism-of-liberal-arts-colleges) **and** [**Yale**](http://www.nytimes.com/2016/02/07/education/educator-recounts-painful-experience-of-halloween-email-furor-at-yale.html)**. This one-sided representation of campus speech doesn’t reflect my 14 years teaching in large public institutions in Michigan, Texas and Wisconsin. In that time, no student has ever demanded that my classes include a trigger warning or asked for a safe space.** But my colleagues and I have been given much more reason to worry about the ideological agendas of elected officials and politically appointed governing boards. Students can protest on the campus mall, demanding that policies be changed; elected officials can pass laws or cut resources to reflect their beliefs about how a campus should operate. **One group has much more power than the other.** Faculty members conducting research on social or environmental issues that does not align with views of the party controlling the State Legislature may prefer to keep their heads down rather than speak out. **At the University of North Carolina, the board of governors** [**closed**](http://www.nytimes.com/2015/02/20/us/ideology-seen-as-factor-in-closings-in-university-of-north-carolina-system.html) **a privately funded research center that studied poverty; its director had criticized state elected officials for adopting policies that he argued amounted to “**[**a war on poor people**](http://www.dailytarheel.com/article/2015/03/professor-gene-nichol-says-politics-caused-the-poverty-centers-closing).” Amid broader budget cuts here in Wisconsin, [Gov. Scott Walker](http://www.nytimes.com/topic/person/scott-k-walker?inline=nyt-per), without warning or explanation, tried to yank all the state funding for [a renewable energy](http://archive.jsonline.com/news/statepolitics/scott-walker-wants-to-end-funding-for-renewable-energy-program-b99452612z1-294532231.html) research center. **On both private and public campuses, instructors who discuss race, gender, class, reproductive rights, elections or even just politics can find themselves subjected to attack by conservative groups like Media Trackers or** [**Professor Watchlist**](http://www.nytimes.com/2016/11/28/us/professor-watchlist-is-seen-as-threat-to-academic-freedom.html)**. Faculty members in public institutions also have to worry about the possibility of having their** [**email searched**](http://www.nytimes.com/2011/03/26/us/politics/26professor.html) **via Freedom of Information law requests.** The ultimate audience for such trawling is lawmakers, who set the rules for public institutions. Indeed, a Media Trackers employee whose job included writing negative profiles of Wisconsin professors recently [took a position](http://host.madison.com/news/local/govt-and-politics/brian-sikma-leaves-media-trackers-for-wisconsin-sen-duey-stroebel/article_1e40983b-25d7-5da7-9dec-7e915238c8f0.html?utm_medium=social&amp;utm_source=twitter&amp;utm_campaign=user-share) with a state senator who likes to attack universities as being unfriendly to free speech. **After having seen** [**tenure protections weakened**](http://www.nytimes.com/2016/01/17/opinion/campaign-stops/the-destruction-of-progressive-wisconsin.html) **in the last legislative session, Wisconsin professors now face the prospect that legislators will allow** [**guns in classrooms**](http://host.madison.com/ct/news/local/education/university/uw-madison-students-lining-up-against-bill-that-would-allow/article_bf70699f-4b7a-50ef-af3b-e21c862bee65.html)**, something our private peers will not have to contend with as they seek to protect a climate conducive to vigorous debate. Complaints about campus speech that focus on the demand for safe spaces in private settings are not just quaint by comparison; they create a blind spot about more serious threats to free speech**. The risk is that legislators and others who see themselves as protectors of free speech on campus come to treat it as an à la carte menu. They lecture students that a higher education experience means listening to challenging perspectives, even as they ignore or actively support the erosion of the structural conditions that allow such speech. If you truly believe that a university should be a place where people are empowered to pursue a fearless sifting and winnowing of ideas and evidence that benefit us all, I have a simple request: Look at the bigger picture beyond a few elite private institutions. **For those of us who teach where most American students are educated, actual triggers are a more relevant danger than trigger warnings. Safe spaces are less threatening than shutting down teaching and research spaces**. Policy makers who accuse students of weakening campus speech should lead by example. Free speech on campus has survived and will survive challenges from students and other members of civil society. Its fate is much less certain when the government decides to censor discomforting views.

### Godrej

#### Public education is under siege by neoliberalism and all who oppose it have their right to speak taken away – dissent is discouraged through punishment by neoliberalism.

**Godrej:** Godrej, Farah [Professor of Political Science, UC Riverdale] “Neoliberalism, Militarization, and the Price of Dissent.” *The Imperial University.* 2014. RP

In this chapter, **I argue that the neoliberal logic of private capital at work in the privatization of the University of California is necessarily intertwined with the logic of militarization and the criminalization of dissent. I will argue that the deliberate and systematic privatization of one of the nation’s great- est public education systems engenders—and in fact *requires*—a militarized enforcement strategy that relies on criminalizing those who dissent and on being able to engage in legitimized violence against such dissenters as and when necessary**. e enforcement of the tuition hikes, budget cuts, and other so-called austerity measures at the heart of the privatization strategy is an irreducibly political project, not simply because it relies on a rhetorical polit- ical strategy that cleverly assigns responsibility for privatization to recalci- trant state legislators who insist on state disinvestment in public education rather than to those elites within the UC leadership who stand to bene t from such privatization. **It is political and politicized in a much deeper sense in that it is able to plausibly and powerfully squash all public dissent from this plan by casting those who dissent against its neoliberal logic as criminal, ensuring that the “price” of their dissent—whether in terms of violence, jail time, or simply public stigmatization—is high enough to discourage further dissent**. It uses the legal-political resources of the neoliberal state and repli- cates the neoliberal state’s complicity with private capital in order to build political legitimacy for its repression of dissenting views. The basic premise of my chapter—that the leadership of the University of California has since 2009 been committed to the deliberate and system- atic privatization of one of the nation’s premier public education systems— should not be in question. is plan involves being complicit with the state’s disinvestment in public education and shi ing the burden of payment for education from society to individual students. e e ect of this shi hits the least privileged the hardest, so that the accessibility and a ordability of this education is eroded, particularly for those who are least able to a ord this burden. Access to education in this system is now meant to require one of two routes: already having the wealth and privilege to pay the exponen- tially multiplied fees or taking on unimaginable amounts of student debt in order to do so, which in turn provides pro table investments for banks. e outcome of this deliberate plan is to further widen the already massive inequalities of income so as to reinforce existing privileges of race, wealth, class, income, and so forth. Indeed, as Chris Neweld has so convincingly argued, the nancial and political crises of public universities are the result of a conservative campaign to end public education’s democratizing in u- ence on American society. One of the greatest experiments in democracy, the University of California’s commitment to accessible, a ordable public education, had created unprecedented levels of social and economic mobility over the past forty or so years while creating a racially integrated mass mid- dle class. But New eld skillfully demonstrates how the expansive vision of an equitable America that emerged from the postwar boom in college access has gradually been replaced by the emergence of the antiegalitarian “cor- porate university,” which contributes to the ongoing erosion of the college- educated middle class. The specifics of the University of California’s strategy of systematic privatization should not require much exploration; vocal critiques by dis- senting scholars within the UC system have repeatedly demonstrated that the so-called austerity measures such as tuition cuts, fee hikes, and budget cuts are *not* to be seen as the somewhat desperate response of a hapless and helpless UC leadership with no other choice in the face of a bankrupt state that insists on disinvestment. The convincing choruses of “What else can we do?” constitute the rst discursive political victory of the UC leadership, ensuring that the state is seen as the political problem and that the leader- ship’s own abdication of responsibility for forcefully and publicly advocating for public education is utterly occluded. Indeed, what is occluded above all is the fact that privatization, rather than being a necessary evil, comes about as the result of deliberate complicity with—and in fact advocacy of—neoliberal disinvestment in the concept of education as a public good by the very people charged with protection and disbursement of this public good. And consequently, education is systematically reframed as a private good existing in the sacred neoliberal realm of individual choice, something therefore to be commodified and paid for by those who have the resources. But it is crucial to recall that such reframing is the result of a rhetorical strategy by precisely those who would pro t from this commodi cation and privatization. However, in order to be able to enforce the tuition hikes, budget cuts, and other “efficiency” and “austerity” measures at the heart of this privatization strategy, the UC leadership has relied on a concomitant strategy of plausibly and powerfully squashing all public dissent from this plan. I argue here that the enforcement strategy has two distinct but interrelated components. First, it uses a militarized police force in order to in ict injury and violence upon any protesters. Second, it engages in the deliberate and systematic criminal- ization of all dissent that arises in opposition to this plan. e two compo- nents are of course intertwined, for the one requires the other: all violence in icted on a dissenting public must be legitimized and justi ed as a necessary measure in the public’s own interest to maintain law and order against ostensible criminal threats. **Together, these combined elements of militariza- tion and criminalization are designed to ensure that the price of protest is so high that dissent against the privatization strategy becomes prohibitively expensive**. e neoliberal language of “price” and “expense” here is of course intentionally multivalent. It includes the literal “price” in terms of nancial cost of ensuing legal battles but also refers to the cost of being labeled as a criminal in the public imagination or of su ering injury by police forces. **The higher these costs, the more those involved in dissent are incentivized into silence through a carefully constructed chilling e ect on all forms of speech and action that criticize, protest, or dissent against the privatization plan.**

#### This crackdown causes campus militarization and police brutality.

**Godrej:** Godrej, Farah [Professor of Political Science, UC Riverdale] “Neoliberalism, Militarization, and the Price of Dissent.” *The Imperial University.* 2014. RP

UC Davis professor and poet Joshua Clover, who was arrested as part of the civil disobedience movement against privatization, goes on to point out that while the specifics of such connections may vary, the systemic logic is clear: “**Heightened campus security is inextricably linked to heightened campus securitization in its two main forms**: the decision of universities to pursue a certain line of investment strategies which move money away from educa- tional services and into capital projects; and the corresponding decision to cover those educational costs by shi ing burdens to students at a rate which can only be nanced though student loans, concomitantly providing pro t- able investment for banks laden with otherwise fallow capital. e rise in tuition and indebtedness within the context of economic crisis simply is the militarization of campus; they are one and the same.”5 **In other words, to paraphrase UC Davis faculty member and activist Nathan Brown, police brutality is an administrative tool to enforce tuition increases6 precisely because of the link between privatization and militarization. In short, it is no accident that we see the repeated deployment of armored, armed, militarized police forces on campuses where large crowds of students and faculty and sta gather to protest the erosion of the accessi- bility and a ordability of public education. Nor should it have been surpris- ing that in July 2012, the UC Berkeley police department brie y considered the purchase of an armored military tank with grant funds from the U.S. Department of Homeland Security. e UC administration is willing to, able to, and indeed does deploy militarized force in order to make the cost of dissent high. Note that its deployment of both campus police and external police forces makes the neoliberal state complicit in the militarization of these campus spaces**. So this is one sense in which it is in the administration’s interest to make sure that the cost of protest and dissent is high. e mes- sage is clear that if dissent occurs publicly and collectively, those involved are likely to be pepper sprayed, beaten with batons, shoved to the ground, shot with lead paint bullets, and so forth. **It is better, in short, to stay home and silent rather than to participate in such events.**

#### Universities cooperate with the state to ensure there aren’t protests

**Godrej:** Godrej, Farah [Professor of Political Science, UC Riverdale] “Neoliberalism, Militarization, and the Price of Dissent.” *The Imperial University.* 2014. RP

**These and other instances of legal criminalization demonstrate clearly the collusion between university and state authorities in defense of private capital. In instances where the university does not directly criminalize its own faculty and students, it appears to encourage and even assist the state’s legal authorities to act against those who threaten the systemic logic of priva- tization and neoliberalism.** Even when charges are subsequently dropped and protestors pay no price in terms of their criminal records, they are le with the literal cost of nancing their own bail or legal defense to the tune of thousands if not millions of dollars. **Dissent is literally made to be pro- hibitively expensive**. In contrast to the public rhetoric and discursive strate- gies addressed in the previous section, we see here that the university uses a strategy that calls upon the legal resources and mechanisms of the state to replicate the state’s hostility to dissent against privatization and neolib- eral disinvestment in public services. **What is particularly clever about such a strategy is its delivery of threats without the use of speech or discourse**. e discursive message is indeed that those who do not keep their heads low and their mouths shut will be made to pay a high price, quite literally. But this threatening message is never actually spoken. **Rather, it is conveyed through the use of legal prosecution in which the university itself never seems to be directly involved but is always lurking in the shadows, always willing to comply with and support—if not encourage—such prosecution against dissenters.**

### Oparah

#### The censorship of academia is tied to the outgrowth of the prison industrial complex – it chills democratic ideals.

**Oparah:** Oparah, Julia C. [Professor, Mills College] “Challenging Complicity.” *The Imperial University.* 2014. RP

This chapter suggests that **our analysis of the relationship between the academy and U.S. imperialism would benefit from an examination of new regimes of mass incarceration and their imbrication within the fabric of institutions of higher education. I argue that a symbiotic relationship has arisen between the academy and the “prison-industrial complex”—a conglomeration of state surveillance and punishment machinery**—and corporate profit making that has emerged as a response to the rising numbers of “refugees” displaced by and troubling to global economic and political elites. **I argue that transnational technologies of mass incarceration are a key weapon used by contemporary imperial regimes to control marginalized populations and suggest that elective anti-imperialist scholar activists need to pay greater attention to the challenges and complicities posed by this hidden alliance between higher education and the transnational prison-industrial complex**. The chapter identities four ways that carceral dependency ties the university to the political economy of prisons. Finally, I reflect on the challenges of decoupling these dangerous complicities and explore what it would mean to work toward the abolition of the academic-military-prison-industrial complex. 2012: **Students and faculty meet in the student union of Atkins College, a West Coast liberal arts college, to read excerpts from Arizona’s “banned books”—books removed from public school classrooms in the wake of the passage of Arizona State Legislature 15–112, a measure designed to eradicate Mexican American studies from publicly funded schools. Transcending hierarchies between paid sta and students, those gathered commit to working in solidarity with organizers in Arizona to challenge the state’s censorship of antiracist scholarship. Two weeks later, queer and transgender anti-prison activists at a gathering in the same room share a radical analysis of the interconnections among gender policing, racism, and criminalization and encourage the audience to get involved in local struggles against the racialized surveillance and punishment of bodies that transgress narrow gender norms.**

#### The idea of selling out to donors cedes agency to business elites who hold money out in front of colleges to control them.

**Oparah:** Oparah, Julia C. [Professor, Mills College] “Challenging Complicity.” *The Imperial University.* 2014. RP

**2011: Atkins College receives a large donation to build a new graduate business school, which is named for the “self-made,” multimillionaire philanthropist who made the new building possible**. e new building, with its state of the art design; striking glass, steel, and granite structures; and liv- ing roof, is in sharp contrast to the aging, ine cient but much-loved infra- structure found elsewhere on the campus, creating a disjuncture between the “old” and new liberal arts. e donor is a leading funder of colleges, univer- sities, and high schools and is committed to opening doors for women in higher education and business. He is also a passionate supporter of Israel and has given more than $30 million to the Technion Institute in Haifa, Israel. 2011: Cornell University, in collaboration with Technion Institute, wins a New York City contest to build an engineering campus with a land grant on Roosevelt Island and $100 million for infrastructure improvements.3 Cor- nell students, faculty, and local activists protest the partnership, claiming that Technion—Israel’s leading technological innovator—is complicit with the illegal occupation of Palestinian territory and war crimes against Pal- estinians.4 ey point to Technion’s role in the development of surveillance, security, and military equipment—from remote-controlled bulldozers to weapons and armor—used by the Israeli military to perpetuate the territo- rialized control and incapacitation of Palestinians.5 Despite high-pro le stu- dent activism against Technion at Cornell and elsewhere, students at Atkins remain muted about their benefactor’s connections to the Israeli military- industrial complex. These three interconnected stories illustrate the contradictions always present in the lives and work of scholar-activists within the imperial university. **On the one hand, institutions of higher education are sites of immense transformation, particularly for undergraduate students who will go through a process of unlearning and rethinking in preparation for life beyond the classroom**. is moment of openness has immense potential for transformative educational praxis that allows students to locate their own experiences within systems of dominance; to build solidarities across racial, gender, class, and national lines; and to imagine and begin to enact forms of resistance. **On the other hand, there are dangerous complicities implicit in our attempts to carve out sites of resistance from within the neoliberal university. While schools like Atkins College provide an insurgent space for the development of scholarship that names and resists state violence and repression, globalization, militarism, and empire, they are also deeply embedded in and reliant on the very processes interrogated by these disciplines. As higher edu- cation has become increasingly corporatized**, scholars have noted the con- solidation of an academic-military-industrial complex, an interdependent and mutually constitutive alliance whereby corporate priorities and cultures, including the intellectual needs of the military-industrial complex, increasingly shape the face of academia. ose concerned with this trend have pre- dominantly focused their attention on the large “research one” universities that receive the most government and corporate funding to develop intellec- tual commodities that advance business and strategic military imperatives.6 But as the previous example demonstrates, even college campuses that have historically upheld the value of a liberal arts education that transcends the immediate needs of the workplace or marketplace are increasingly borrow- ing architecture, priorities, and language from corporate elites in order to compete in the global knowledge marketplace. is corporatization of the liberal arts brings it into alignment with global relations of ruling, enforced by the U.S. military-industrial complex and U.S.-backed occupations. Whereas intellectual collaborations with research universities provide the corporate sector with technological capital, liberal arts colleges can pro- vide much needed moral capital because of their association with progres- sive values. In the previous example, Technion not only won a signi cant donation of corporate wealth but also became part of the funding portfolio of a respected philanthropist with liberal credentials gained in part through his work with **Atkins College. us Atkins was enlisted in the normalization of an illegal military occupation that routinely violates Palestinian human rights and transgresses international law**.7 **In return, the college received its largest ever donation from a single donor and was able to expand its plant and curriculum at a time of reduced state funding for higher education**. e relationship between such a donation and insurgent disciplines like ethnic or queer studies is complex. All students and departments can arguably be seen to bene t from an infusion of cash at a time of resource restriction via a trickle-down e ect, and administrators solicit such donations in part to support the nancial sustainability of the institution as a whole. e progres- sive critical engagements by Atkins College students and faculty in relation to the attack on ethnic studies and the policing of gender nonconformity are thus undergirded, if indirectly, by the nancial support provided to the college’s new business school. **However, the lavish funding of departments that provide the most obvious returns to corporate funders—business and technology—and simultaneous shrinkage through budget cuts and furloughs of the rest also serves to delineate and exacerbate disciplinary inequalities between the “haves” and “have nots” of the new knowledge economy.**

#### Either you’re with the movement or against it – alleged neutrality serves to mask the neoliberal forces that are cracking down on the academy.

**Oparah:** Oparah, Julia C. [Professor, Mills College] “Challenging Complicity.” *The Imperial University.* 2014. RP

**If anti-imperialist scholars are to heed APMC’s call to develop a multifaceted analysis that simultaneously addresses militarism and prisons, then our critical interrogations of the imperial university must make visible its reliance on and contributions to the prison-industrial complex.** **Elsewhere, I have argued that universities and colleges educate a global knowledge elite who will become the “prison wardens”—literally and metaphorically— of the nonuniversitied majority** and produce technological advances that permit the use of incarceration on a massive scale as a solution to the social ills and unrest caused by the globalization of capital and military repression worldwide. While **this critique remains pertinent, the widespread use of policing and repression against students involved in Occupy protests and other expressions of dissent against neoliberal attacks on students and workers is a reminder that enrollment in an elite institution of higher education is no guarantee of protection. Students who choose not to ally themselves with the priorities of ruling elites or to adhere silently to the strictures of “patriotic correctness” but instead confront the neoliberal state can quickly be removed from their positions of privilege and rendered part of the “criminal class.” Antiprison activists often posit schools and universities as the inverse of the prison-industrial complex**. In many ways, this makes sense. As campaigns for “Education Not Incarceration” point out, it costs far less to send a young person to a university than it does to imprison him or her, yet young people of color in the United States are more likely to go to prison or jail than to higher education. Demanding that the funds put into policing and detain- ing young people be invested instead into failing public schools and under- funded institutions of higher education is one way of galvanizing educators and students and their families against prison expansion. Low-income families of color see education as a pipeline for their children out of the economically disadvantaged neighborhoods that the prison-industrial complex feeds on. Similarly, advocates of educational programs inside prisons have demonstrated a correlation between access to K–12 and college education for prisoners and successful reentry a er incarceration. **However, although the education/incarceration dichotomy is a useful strategic tool for activist projects, it also masks the ways in which schools, universities, and spaces of confinement are linked and mutually reinforcing**. In the case of public schools, this linkage is now being explored by racial justice and antiprison activists, nonpro t organizations and scholars. **Public schools in low-income neighborhoods serving predominantly black and Latino young people have become training grounds for the juvenile detention centers, jails, and prisons that await many of their students, and they serve as fertile soil for army recruiters**. School budgets are increas- ingly spent on surveillance equipment and policing, including surveillance cameras in corridors and classrooms, metal detectors for entranceways, and security personnel. **Systemic underfunding, a reliance on highly regimented and disciplined regimes, and a culture of surveillance and control have led activists and scholars to decry the emergence of a “school-to-prison pipeline.” At the same time, aggressive military recruitment in high schools alongside legislation forcing public schools to allow the military unfettered access to their pupils point to a “school-to-war pipeline.” is prisonization and militarization of urban public schools is a sharp contrast to the belief in education as a pipeline to social and economic mobility that is held by many low-income parents. Whereas public schools have been absorbed into the prison-industrial complex as a producer of raw material—“juvenile delinquents,” “criminals,” or army recruits—the relationship between the university and the prison- industrial complex is more multifaceted and has largely been overlooked by scholars**. I have identified four functions that tie the university to the military-prison-industrial complex, revealing a mutually reinforcing relation- ship between systems of higher education and mass incarceration. First, as the Atkins College case reveals, universities invest in prisons and the military. With an eye for ways to grow their endowments, colleges and universities in the 1990s became major financiers of private prisons and the military- industrial complex through direct investments and less visible financing via endowment management companies that own sizeable stakes in prison corporations and the defense industry. In tying endowment growth to the success of private prison and defense corporations, university managers have created a stake for students, faculty, and administrators in the continuation of the prison buildup. More prisoners mean more profits for shareholders; that translates into new buildings, better facilities, improved technology, and even financial aid packages.

#### Left unchecked, academia will just train students to continue the legacy of the prison industrial complex

**Oparah:** Oparah, Julia C. [Professor, Mills College] “Challenging Complicity.” *The Imperial University.* 2014. RP

We should not be surprised by the synergistic relationship between aca- demic expertise and penal technologies. As Biko Agozino argues, crimi- nology was developed “to serve imperialism as a tool for the repression of others.”45 **In the “battle of ideas”46 that characterizes criminal justice policy, academic expertise carries a weight of authority that can lend legitimacy to politically driven, costly, and violent penal technologies**. But the prison- industrial complex does not just rely only on conservative criminology. **When public opinion periodically turns against the high social and economic cost of ever-growing rates of incarceration and racially discrepant criminal justice policies, reforms and scholarly backing in the work of progressive scholars. In this way, the prison-industrial complex can retrench, reshape, and nd new ways to continue its inexorable expansion.** As Foucault warned us, liberal reform e orts, far from challenging carceral regimes, continually reconstitute and undergird the prison.47 is pattern is visible in the contem- porary shi toward “gender-responsive strategies” (GRS). Promoted by lib- eral feminist criminologists as a corrective to practices that ignore women’s particular life experiences and pathways into the criminal justice system, the gender-responsive model has been adopted by the U.S. Department of Justice as the best practice for work with “women o enders.”48 For example, in California, a GRS commission, convened by the Department of Correc- tions and Rehabilitation in 2005, identi ed 4,500 women who it deemed low risk and proposed that they should be relocated from the huge penal ware- houses currently holding women prisoners. However, rather than promot- ing decarcerative strategies that would return women to the community and build community-based supports to address emotional, health, educational, and housing needs, the commission advocated for the construction of “female rehabilitative community correctional centers” that would add 4,500 prison beds to the state’s already bloated prison system.49 e gender-responsive model ignores the violence of imprisonment, rearticulates prison expansion as a means of meeting women’s needs, and thus undermines e orts to redi- rect public funds from punishment into community programs, housing, wel- fare, and other supports for women. By positing the possibility of a humane, woman-centered, rehabilitative prison, these liberal feminist scholars move us farther away from the possibility of ending our reliance on mass incar- ceration by temporarily alleviating its contradictions. In this way, scholars produce knowledge that sediments the prison and its corollary, mass racial- ized incarceration, as inevitable and necessary, even when they appear to critique speci c penal regimes. us the academy is a major (re)producer of carceral logics. e economic, ideological, and technological synergies between the uni- versity and mass imprisonment suggest that the academy is not just com- plicit with the prison-industrial complex; it is a constitutive, if overlooked, part of it. **Indeed, we can argue that students, faculty, and administrators, regardless of our political positions for or against penal warehousing, are by virtue of our location active participants within the academic-prison- industrial complex. As the university underwrites and legitimates processes of mass incarceration, it falls to insurgent subjects within the academy to challenge and ultimately sever the symbiotic relationship between penal and educational systems. In the following section, I brie y explore the possibilities of dismantling penal dependency.**

#### Only a radical demand on the academy can create change – the stifling of discussion makes this demand meaningless.

**Oparah:** Oparah, Julia C. [Professor, Mills College] “Challenging Complicity.” *The Imperial University.* 2014. RP

In my earlier work on the academic-prison-industrial complex, **I suggested that activist scholars were producing and disseminating countercarceral knowledge by bringing academic research into alignment with the needs of social movements and interrogating and reorganizing relationships between prisoners and researchers in the free world**. Given the history of epistemic and physical violence and exploitation of research subjects by the academy, such a reorganizing of relationships and accountabilities is clearly urgently needed. Yet no matter how radical and participatory our scholarship is, we ultimately fail to dismantle the academic-military-prison-industrial com- plex (academic-MPIC) if we address it only through the production of more knowledge. Since knowledge is a commodity, marketed through books, arti- cles, and conferences as well as patents and government contracts, the pro- duction of “better,” more progressive or countercarceral knowledge can also be co-opted and put to work by the academic-MPIC. An abolitionist lens provides a helpful framework here. Antiprison scholars and activists have embraced the concept of abolition in order to draw attention to the un nished liberation legislated by the irteenth Amend- ment, which abolished slavery “except as a punishment for a crime.” Aboli- tionists do not seek primarily to reform prisons or to improve conditions for prisoners; instead they argue that only by abolishing imprisonment will we free up the resources and imagine the possibility of more e ective and less violent strategies to deal with the social problems signaled by harmful acts. While early abolitionists referred to themselves as prison abolitionists, more recently there has been a shift to prison-industrial complex abolitionism to expand the analysis of the movement to incorporate other carceral spaces— from immigrant detention centers to psychiatric hospitals—and to emphasize the role of other actors, including the police and courts, politicians, corporations, the media, and the military, in sustaining mass incarceration. How does an abolitionist lens assist us in assessing responses to the academic-MPIC? First, it draws our attention to the economic basis of the academic-MPIC and pushes us to attack the materiality of the militari- zation and prisonization of academia rather than limiting our interventions to the realm of ideas. is means that we must challenge the corporatization of our universities and colleges and question what in uences and account- abilities are being introduced by our increasing collaboration with neoliberal global capital. **It also means that we must dismantle those complicities and liberate the academy from its role as handmaiden to neoliberal globaliza- tion, militarism, and empire. In practice, this means interrogating our uni- versities’ and colleges’ investment decisions, demanding they divest from the military, security, and prison industries; distance themselves from military occupations in Southwest Asia and the Middle East; and invest instead in community-led sustainable economic development.** It means facing allega- tions of disloyalty to our employers or alma maters as we blow the whistle on unethical investments and the creeping encroachment of corporate fund- ing, practices, and priorities. **It means standing up for a vision of the liberal arts that neither slavishly serves the interests of the new global order nor returns to its elitist origins but instead is deeply embedded in progressive movements and richly informed by collaborations with insurgent and activ- ist spaces.** And it means facing the challenges that arise when our divest- ment from empire has real impact on the bottom line of our university and college budgets. Andrea Smith, in her discussion of native studies, has argued that politi- cally progressive educators o en adopt normative, colonial practices in the classroom, using pedagogical strategies and grading practices that rein- scribe the racialized and gendered regulation, policing, and disciplining that PIC abolitionists seek to end. In this sense, there could be no “postcarceral” academy. Certainly, sanctions for undergraduate and graduate students and faculty who challenge the university’s regular practices—from failing grades and expulsions to tenure denials and deportation—are systemically distrib- uted, along with rewards for those who can be usefully incorporated. **Yet uni- versities and colleges also hold the seeds of a very di erent possible future, evoked, for example, by the universal admissions movement or by student strikes in Britain and Canada that demand higher education as a right, not a privilege of the wealthy.** Rather than seeking to eradicate or replace higher educational institutions altogether, I suggest that we demand the popular and antiracist democratization of higher education. **The first step toward this radical transformation is the liberation of aca- demia from the machinery of empire: prisons, militarism, and corporations.** Speaking of abolishing the white race, Noel Ignatiev argues that it is neces- sary for white people to make whiteness impossible by refusing the invisible bene ts of membership in the “white club.” Progressive academics are also members of a privileged “club,” one that confers bene ts in the form of a pay- check, health care, and other fringe bene ts; social status; and the freedom to pursue intellectual work that we are passionate about. But we can also put our privilege to work by unmasking and then unsettling the invisible, symbi- otic, and toxic relationships that constitute the academic-MPIC. **Decoupling academia from its velvet-gloved master would begin the pro- cess of fundamental transformation**. Without unfettered streams of income from corporations, wealthy philanthropists, and the military, universities and colleges would be forced to develop alternative fund-raising strategies, relationships, and accountabilities. **Can we imagine a college administration aligned with local Occupy organizers** to protest the state’s massive spend- ing on prisons and policing and demand more tax money for housing, edu- cation, and health care? Can we imagine a massive investment of time and resources by university personnel to solve the problem of how to decarcerate the nation’s prisons or end the detention of undocumented immigrants in order to fund universal access to higher education? **Can we imagine a uni- versity run by and for its constituents, including students**, kitchen and gar- den sta , and tenure-track and adjunct faculty? ese are the possibilities opened up by academic-MPIC abolition.

### Hudson

#### Speech codes chill free speech and are enforced in ableist ways – best studies go Aff

**Hudson:** Hudson, David [Contributor, Huffington Post] “How Campus Policies Limit Free Speech.” *Huffington Post.* June 2016. RP

**Colleges and universities are supposed to be places where freedom of expression flourishes. Sadly, that is not the case. At a recent debate on the Yale University campus, 66 percent of the attendees supported a proposition that “free speech is threatened.”** Places of higher learning seem more interested in “safe spaces” rather than in freedom of expression. Several incidents across campuses illustrate this. **Recently, at Emory, students complained after they found chalk messages scrawled around campus voicing support for Donald J. Trump. Last year at the University of Ottawa, a yoga class designed for handicapped people was suspended because the student federation thought it was a form of “cultural appropriation.**” And at Smith College a student sit-in blocked media from entering unless reporters agreed to explicitly state support for the movement in their coverage. Illustrating how contentious the debates have become, two of the most respected American comedians, Chris Rock and Jerry Seinfeld, said that colleges are eager “not to offend anybody.” Some students at a private Ivy League school even signed a petition to repeal the First Amendment. **Ideally, colleges and universities would foster an exchange of competing and controversial ideas. The reality is much different. Some colleges and universities limit discourse by silencing speech that might offend others through so-called speech codes and free speech zones. In studying free expression issues for** more than 20 years**, I strongly believe such polices have led to a chilling effect on speech**. They also have led to a mentality where students do not wish or want to face an opposing viewpoint. So, what are these policies?

### Hodulik

#### The Wisconsin code was so narrow it didn’t do anything

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

**The small number of complaints and even smaller number of disciplinary actions under the Wisconsin rule reflects its limited applicability and impact on campus speech and other expressive activities.** As noted above, the regulation is so narrow that many of the incidents leading to its adoption would not be prohibited by its terms.42 **The "Harlem room" and "Fiji Island party" episodes mentioned above would not, for example, have been prohibited under the rule because they did not involve racist epithets directed at specific individuals, coupled with the dual intent to demean and to make the educational environment hostile for those persons**. Similarly, a variety of complaints brought since the adoption of the rule have been dismissed because the conduct involved was beyond the rule's scope. **In a number of situations, the behavior simply was not the kind of specifically directed, intentionally demeaning and harmful discriminatory speech proscribed by the rule even where it included offensive language or opinions. Inci- dents found not to violate Wisconsin's rule included: The display, in a campus gallery, of artwork offensive to Catholics**; a student's collective reference to a group of student senators as "rednecks;" a statement by a Libyan to a Zionist that Libyans would ultimately destroy Zionism; and a cartoon in a student newspaper on the subject of abortion that was allegedly offensive to Christians.4 **As these situations illustrate, there is a wide range of expressive conduct unaffected by the rule, even if it is regarded as offensive by some**. Such conduct includes artistic expression, opinions and even name-calling aimed at a group of people (as opposed to individuals.)

### Varden

#### The use of words don’t involve a violation of freedom.

**Varden**, Helga, “A Kantian Conception of Free Speech,” in Freedom of Expression in a Diverse World, edited by Deirdre Golash. New York: Springer, 2010. RP

**This distinction between internal and external use of choice and freedom explains why Kant maintains that most ways in which a person uses words in his interactions with others cannot be seen as involving wrongdoing from the point of view of right**: “such things as merely communicating his thoughts to them, telling or promising them something, whether what he says is true and sincere or untrue and insincere” do not constitute wrongdoing because “it is entirely up to them [the listeners] whether they want to believe him or not” (6: 238**). The utterance of words in space and time does not have the power to hinder anyone else’s external freedom, including depriving him of his means**. Since words as such cannot exert physical power over people, it is impossible to use them as a means of coercion against another. **For example, if you block my way, you coerce me by hindering my movements: you hinder my external freedom. If, however, you simply tell me not to move, you have done nothing coercive, nothing to hinder my external freedom, as I can simply walk passed you.** So, even though by means of your words, you attempt to influence my internal use of choice by providing me with possible reasons for acting, you accomplish nothing coercive. That is, you may *wish* that I take on your proposal for action, but you do nothing to force me to do so. Whether or not I *choose to act* on your suggestion is still entirely up to me. T**herefore, you cannot *choose* for me. My choice to act on your words is beyond the reach of your words, as is any other means I might have**. Indeed, even if what you suggest is the virtuous thing to do, your words are powerless with regard to making me act virtuously. Virtuous action requires not only that I act on the right maxims, but that I also do so because it is the right thing to do, or from duty. **Because the choice of maxims (internal use of choice) and duty (internal freedom) are beyond the grasp of coercion, Kant holds that most uses of words, including immoral ones such as lying, cannot be seen as involving wrongdoing from the point of view of right.**

#### Regardless of the content, outlawing types of free speech violates Kantian ethics.

**Varden**, Helga, “A Kantian Conception of Free Speech,” in Freedom of Expression in a Diverse World, edited by Deirdre Golash. New York: Springer, 2010. RP

There is clear textual support that Kant provides the kind of twofold defense of free speech argued here, namely that communication of thought does not typically involve private wrongdoing and that the state must protect free speech in order to function as a representative authority. **To outlaw free speech, Kant argues in the essay “What is Enlightenment?”, is to “renounce enlightenment... [and] to violate the sacred right of humanity and trample it underfoot” (8: 39). Outlawing free speech is not only stupid, since it makes enlightenment or governance through reason impossible, but it involves denying people their right of humanity**. Their right of humanity is denied by outlawing free speech, because such legislation involves using coercion against the citizens even when their speech does not deprive anyone of what is theirs. Moreover, outlawing free speech evidences a government “which misunderstands itself” (8: 41). Similarly, Kant argues both in this text and in “Theory and Practice” that such legislation expresses sheer irrational behavior on the part of a government. “*[F]reedom of the pen*”, Kant writes in the latter essay, is the sole palladium of the people’s rights. For to want to deny them this freedom is not only tantamount to taking from them any claim to a right with respect to the supreme commander (according to Hobbes), but is also to withhold from the latter – whose will gives order to the subjects as citizens only by representing the general will of the people – all knowledge of matters that he himself would change if he knew about them and to put him in contradiction with himself.... (8: 304, cf. 8: 39f) **Free speech is seen as the ultimate safeguard or protection of the people’s rights. Therefore, a public authority – an authority representing the will of the citizens and yet the will of no one in particular – cannot outlaw free speech, since citizens qua citizens cannot be seen as consenting to it. Such a decree would bring the sovereign ‘in contradiction with himself’ since it would involve denying the sovereign the vital information it needs in order to act as the representative of the people**. In “What is Enlightenment?” Kant expands this point: “[t]he *public* use of one’s reason must always be free... by the public use of one’s own reason I understand that use which someone makes of it *as a scholar* before the entire public of the *world of readers*” (8: 37). Every citizen must have the right to engage truthfully, yet critically in public affairs – to be a scholar – and so to raise her voice and explain why she judges the current public system of laws to be unjust or unfair. If such voices are not raised, the public authority cannot possibly be able to govern wisely; without a public expres- sion of the consequences for right of particular laws, the public authority does not have the information required to secure right for all and so to represent its citizen

### Moore

#### Speech codes are high in the status quo.

**Moore:** Moore, James R. [Professor, Cleveland State University] “You Cannot Say That in American Schools: Attacks on the First Amendment.” *Social Studies Research and Practice.* Volume 11. Spring 2016. RP

The first amendment in the Bill of Rights, the foundation of individual freedom in the United States, protecting the freedoms of religion, speech, press, assembly, and petition. These basic freedoms, derived from Enlightenment philosophy and codified in the world’s oldest written constitution, have been an essential characteristic of American democracy and law since 1791. This is continuity considering “between 1971 and 1990, 110 of the world’s 162 national constitutions were either written or extensively rewritten” (Haynes, Chaltain, Ferguson, Hudson, & Thomas, 2003, p. 9). The first amendment has been the conduit employed by U.S. citizens to create an increasingly free and just society based on the constitutional ideals of equality before the law, popular sovereignty, limited government, checks and balances, federalism, and individual liberties (Center for Civic Education, 2009). Advocates for the abolition of slavery and the expansion of civil rights were able, after long struggles, to achieve their goals of expanding freedom and social justice by using their natural rights to free expression and religious liberty (Dye, 2011). Since no constitutional liberty or right is absolute, American institutions continuously debate the definitions, limitations, and exceptions to these fundamental rights based on social, political, and technological changes. This task has been exacerbated by increasing cultural diversity and technological changes (the Internet and social media) that expand communication. In addition, efforts by some people to censor language in the name of tolerance and respect for diversity have increased in recent years (Foundation for Individual Rights in Education, 2013, p.4). **The first amendment is the world’s oldest written safeguard for freedom of expression— this includes allowing blasphemy and expression that may be radical, offensive, controversial, ignorant, and militantly bigoted—and is the cornerstone of participatory democracy** (Haynes et al., 2003**). The first amendment is under constant attack from some religious organizations, political action groups, ethnically-based activist groups, and, most alarmingly, from American public universities that severely restrict freedom of expression and public debate** (Foundation for Individual Rights in Education, 2013; Haynes, 2013; Hudson, 2011). **The Foundation for Individual Rights in Education (2013) found “62% of universities (254 out of 409 universities in the survey) maintain severely restrictive red-light speech codes – policies that clearly and substantially prohibit protected speech” (p. 4). Many Americans do not understand, or do not accept, that the first amendment protects unpopular, offensive, controversial, and radical speech; this includes making hateful statements about race, gender, religion, and any other topic the speaker wishes to address** (Haynes et al., 2003; Marshall & Shea, 2011; Pew Forum on Religion and Public Life, 2010). **Many hate speech codes, thus, often are defined “as hostile or prejudicial attitudes expressed toward another person’s or group’s characteristics, notably sex, race, ethnicity, religion, or sexual orientation**” (Dye 2011, p. 508). The hate speech instituted in American universities and Kindergarten-12 schools are often, albeit well-intended, violations of the First Amendment (Foundation for Individual Rights in Education; Haynes, 2013; Saxe V. State College Area School District, 2001).

### ACLU Hate Speech

#### Only open discussion of hate speech on campus can create social change that solves the root cause.

**The ACLU:** The American Civil Liberties Union [Organization that sues for justice and writes about the law] “Hate Speech on Campus.” *ACLU.* 2016. RP

**Many universities, under pressure to respond to the concerns of those who are the objects of hate, have adopted codes or policies prohibiting speech that offends any group based on race, gender, ethnicity, religion or sexual orientation. That's the wrong response, well-meaning or not.** The First Amendment to the United States Constitution protects speech no matter how offensive its content. Speech codes adopted by government-financed state colleges and universities amount to government censorship, in violation of the Constitution. And the ACLU believes that all campuses should adhere to First Amendment principles because academic freedom is a bedrock of education in a free society. How much we value the right of free speech is put to its severest test when the speaker is someone we disagree with most. Speech that deeply offends our morality or is hostile to our way of life warrants the same constitutional protection as other speech because the right of free speech is indivisible: **When one of us is denied this right, all of us are denied.** Since its founding in 1920, the ACLU has fought for the free expression of all ideas, popular or unpopular. That's the constitutional mandate. **Where racist, sexist and homophobic speech is concerned, the ACLU believes that more speech -- not less -- is the best revenge**. This is particularly true at universities, whose mission is to facilitate learning through open debate and study, and to enlighten. Speech codes are not the way to go on campuses, where all views are entitled to be heard, explored, supported or refuted. **Besides, when hate is out in the open, people can see the problem. Then they can organize effectively to counter bad attitudes, possibly change them, and forge solidarity against the forces of intolerance. College administrators may find speech codes attractive as a quick fix, but as one critic put it: "Verbal purity is not social change." Codes that punish bigoted speech treat only the symptom: The problem itself is bigotry. The ACLU believes that instead of opting for gestures that only appear to cure the disease, universities have to do the hard work of recruitment to increase faculty and student diversity; counseling to raise awareness about bigotry and its history, and changing curricula to institutionalize more inclusive approaches to all subject matter.**

#### Legal action to defend free speech sets a precedent that protects protests for social change – Civil Rights proves.

**The ACLU:** The American Civil Liberties Union [Organization that sues for justice and writes about the law] “Hate Speech on Campus.” *ACLU.* 2016. RP

A: Free speech rights are indivisible. **Restricting the speech of one group or individual jeopardizes everyone's rights because the same laws or regulations used to silence bigots can be used to silence you. Conversely, laws that defend free speech for bigots can be used to defend the rights of civil rights workers, anti-war protesters, lesbian and gay activists and others fighting for justice. For example, in the 1949 case of Terminiello v. Chicago, the ACLU successfully defended an ex-Catholic priest who had delivered a racist and anti-semitic speech. The precedent set in that case became the basis for the ACLU's successful defense of civil rights demonstrators in the 1960s and '70s.** The indivisibility principle was also illustrated in the case of Neo-Nazis whose right to march in Skokie, Illinois in 1979 was successfully defended by the ACLU. At the time, then ACLU Executive Director Aryeh Neier, whose relatives died in Hitler's concentration camps during World War II, commented: "Keeping a few Nazis off the streets of Skokie will serve Jews poorly if it means that the freedoms to speak, publish or assemble any place in the United States are thereby weakened."

#### Cross burning and swastika painting aren’t constitutionally protected – they infringe upon property.

**The ACLU:** The American Civil Liberties Union [Organization that sues for justice and writes about the law] “Hate Speech on Campus.” *ACLU.* 2016. RP

A: Symbols of hate are constitutionally protected if they're worn or displayed before a general audience in a public place -- say, in a march or at a rally in a public park. **But the First Amendment doesn't protect the use of nonverbal symbols to encroach upon, or desecrate, private property, such as burning a cross on someone's lawn or spray-painting a swastika on the wall of a synagogue or dorm**. In its 1992 decision in R.A.V. v. St. Paul, the Supreme Court struck down as unconstitutional a city ordinance that prohibited cross-burnings based on their symbolism, which the ordinance said makes many people feel "anger, alarm or resentment**." Instead of prosecuting the cross-burner for the content of his act, the city government could have rightfully tried him under criminal trespass and/or harassment laws.**

#### Empirics confirm speech codes backfire and only punish blacks.

**The ACLU:** The American Civil Liberties Union [Organization that sues for justice and writes about the law] “Hate Speech on Campus.” *ACLU.* 2016. RP

**A: Historically, defamation laws or codes have proven ineffective at best and counter-productive at worst**. For one thing, depending on how they're interpreted and enforced, they can actually work against the interests of the people they were ostensibly created to protect. **Why? Because the ultimate power to decide what speech is offensive and to whom rests with the authorities -- the government or a college administration -- not with those who are the alleged victims of hate speech. In Great Britain, for example, a Racial Relations Act was adopted in 1965 to outlaw racist defamation. But throughout its existence, the Act has largely been used to persecute activists of color, trade unionists and anti-nuclear protesters, while the racists -- often white members of Parliament -- have gone unpunished. Similarly, under a speech code in effect at the University of Michigan for 18 months, white students in 20 cases charged black students with offensive speech. One of the cases resulted in the punishment of a black student for using the term "white trash" in conversation with a white student.** The code was struck down as unconstitutional in 1989 and, to date, the ACLU has brought successful legal challenges against speech codes at the Universities of Connecticut, Michigan and Wisconsin. These examples demonstrate that speech codes don't really serve the interests of persecuted groups. The First Amendment does. As one African American educator observed: "I have always felt as a minority person that we have to protect the rights of all because if we infringe on the rights of any persons, we'll be next."

#### The Aff just causes the problem to go underground.

**The ACLU:** The American Civil Liberties Union [Organization that sues for justice and writes about the law] “Hate Speech on Campus.” *ACLU.* 2016. RP

A: **Bigoted speech is symptomatic of a huge problem in our country; it is not the problem itself.** Everybody, when they come to college, brings with them the values, biases and assumptions they learned while growing up in society, so it's unrealistic to think that punishing speech is going to rid campuses of the attitudes that gave rise to the speech in the first place. **Banning bigoted speech won't end bigotry, even if it might chill some of the crudest expressions. The mindset that produced the speech lives on and may even reassert itself in more virulent forms. Speech codes, by simply deterring students from saying out loud what they will continue to think in private, merely drive biases underground where they can't be addressed. In 1990, when Brown University expelled a student for shouting racist epithets one night on the campus, the institution accomplished nothing in the way of exposing the bankruptcy of racist ideas.**

#### Harassment isn’t even considered speech because it leads to action.

**The ACLU:** The American Civil Liberties Union [Organization that sues for justice and writes about the law] “Hate Speech on Campus.” *ACLU.* 2016. RP

A: Yes. **The ACLU believes that hate speech stops being just speech and becomes conduct when it targets a particular individua**l, and when it forms a pattern of behavior that interferes with a student's ability to exercise his or her right to participate fully in the life of the university. **The ACLU isn't opposed to regulations that penalize acts of violence, harassment or intimidation, and invasions of privacy**. On the contrary, we believe that kind of conduct should be punished. **Furthermore, the ACLU recognizes that the mere presence of speech as one element in an act of violence, harassment, intimidation or privacy invasion doesn't immunize that act from punishment**. For example, threatening, bias-inspired phone calls to a student's dorm room, or white students shouting racist epithets at a woman of color as they follow her across campus -- these are clearly punishable acts. Several universities have initiated policies that both support free speech and counter discriminatory conduct. Arizona State, for example, formed a "Campus Environment Team" that acts as an education, information and referral service. **The team of specially trained faculty, students and administrators works to foster an environment in which discriminatory harassment is less likely to occur, while also safeguarding academic freedom and freedom of speech.**

### Thomas

#### Suits under Title IX fail – the department of civil rights is understaffed and cases take decades.

**Thomas:** Thomas, Katie [Contributor, The New York Times] “Review Shows Title IX Is Not Significantly Enforced.” *The New York Times.* July 2011. RP

**In 1998, the University of Southern California was accused of denying its female students a fair chance at participating in sports. Thirteen years later, the federal agency charged with investigating sex discrimination in schools has not completed its inquiry of U.S.C. In 2008, the same federal agency, the Office for Civil Rights, came across evidence that Ball State University in Indiana was losing a disproportionate number of women’s coaches**. But the agency opted to let [Ball State investigate itself](http://www2.ed.gov/about/offices/list/ocr/docs/investigations/05096001.html). After a two-week inquiry, during which Ball State failed to interview a single coach, the university concluded that there was no evidence that any of the coaches had been unfairly treated or let go. **The federal law known as Title IX — requiring schools at all levels across the country to offer girls and women equal access to athletics — has produced a wealth of progress since it was enacted almost four decades ago. Almost no one disputes that. But scores of schools, year in and year out, still fail to abide by the law. For those schools, almost no one disputes this: There is little chance their shortcomings will ever be investigated, and even if they are, few will be meaningfully punished.** According to a review by The New York Times, the Office for Civil Rights allows cases of suspected discrimination to drag on for years, long after the affected athletes have graduated. **The office — whose staff of 600 full-time employees at its Washington headquarters and 12 regional offices must juggle a variety of cases, including those for disability, age and race discrimination — routinely asks schools to investigate themselves and to develop their own plans for fixing problems. Not surprisingly, the process can lead to further delays and little change.**

#### There’s no punishment to schools for failing to be consistent with Title IX.

**Thomas:** Thomas, Katie [Contributor, The New York Times] “Review Shows Title IX Is Not Significantly Enforced.” *The New York Times.* July 2011. RP

**The Office for Civil Rights certainly has the power to enforce the law: any school that is found to be violating Title IX risks losing its federal funds. But that punishment has never been used since Congress passed the law in 1972. And the office cannot cite any instance in which a case of suspected discrimination against female athletes was referred to the justice department for additional action.** The situation has led many to ask how a federal law can be effective if it is not significantly enforced.

#### Normal means entails universities self-regulating harassment, and they circumvent.

**Thomas:** Thomas, Katie [Contributor, The New York Times] “Review Shows Title IX Is Not Significantly Enforced.” *The New York Times.* July 2011. RP

“**Unfortunately what we see is that many schools are getting away with providing fewer opportunities to girls because they don’t do what they’re supposed to unless made to**,” said Neena Chaudhry, senior counsel at the National Women’s Law Center. Current and former enforcement officials insist they have worked hard to mount meaningful investigations, and they defended the policy of allowing schools to investigate themselves. Most schools, they said, want to correct their problems once they learn they are violating the law. For every Ball State or U.S.C., there are also examples of cases in which investigations by the office yielded significant results. Earlier this year, Lincoln Land Community College in Illinois added a practice field for the women’s softball team, installed two new bullpens, and agreed to give softball and baseball players equal access to batting cages. And Southeastern Community College in Iowa agreed to expand the size of its women’s basketball court, and to give the baseball and softball team equal access to lighted fields. Complaints involving Title IX — and athletics in particular — make up a tiny minority of cases for the Office for Civil Rights, but because of the political weight they often carry, they are among the most time-consuming and closely scrutinized that the office handles, according to interviews with several former civil rights office employees. “**The arena is remarkably politicized**,” said Arthur Coleman, who served as senior policy adviser at the Office for Civil Rights during the Clinton administration. The U.S.C. inquiry illustrates how a complex case and a reluctance to cooperate translated into the longest-running Title IX athletics investigation in the office’s caseload. Linda Joplin, a member of the California chapter of the National Organization for Women, made national headlines when she filed a complaint in 1998 against U.S.C., an athletic powerhouse whose football team is a perennial contender for the national title. The university is private but is subject to Title IX because it receives federal assistance in the form of grants and student aid. Joplin alleged that female athletes at U.S.C. lagged significantly behind men, and women were being denied their fair share of scholarship dollars and other sports spending. After the Office for Civil Rights began its investigation, U.S.C. dug in its heels, recalled Patricia Shelton, the longtime lead investigator on the case, who has since retired. U.S.C. insisted it was doing right by its female students, offering them, for example, the maximum number of athletic scholarships permitted under the rules. But Shelton, the agency’s investigator, said the university also declined to turn over key financial data that would have shown whether it was spending equal amounts of money on men’s and  women’s teams. Kelly Bendell, a lawyer for U.S.C. who has worked on the case since 2000, said the university had complied with all requests for information after initially resisting because of concerns about turning over proprietary financial data. Disputes over basic information explain only parts of the nearly endless case. Bendell, the lawyer for the university, said the agency conducting the investigation “seemed to drop the matter” for five years, with no contact between it and U.S.C. from 2003 to 2008. Shelton, the lead investigator, said responsibility for delays rested with her superiors in Washington. She said she repeatedly wrote up her findings, only to be told they were out of date and needed to be resubmitted. She said she suspected that Washington officials were reluctant to criticize a major athletic program like U.S.C.’s. “There would have been a lot of political fallout,” she said. “Why would they want that?” Over the years, U.S.C has improved its offerings to women, increasing its scholarship aid to female athletes and announcing plans to add [women’s lacrosse](http://www.usctrojans.com/sports/w-lacros/usc-w-lacros-body.html) and [sand volleyball](http://www.usctrojans.com/sports/w-volley/spec-rel/101509aaa.html) teams. The university says its actions have resolved any dispute with the Office for Civil Rights. Ali, the head of O.C.R., acknowledged the case could be closed as soon as this fall. But she did not defend how long it had taken. “This administration has a responsibility to both students and institutions not to let the cloud of these open cases hang over their head,” she said. Joplin, the woman who first brought the case, said the office’s slow response has hurt uncounted female students. **And she questioned whether the knowledge that an institution has never lost its funds for violating Title IX played a role in U.S.C.’s past failure to comply**. “They’re willing to take the funding from the federal government,” she said, “but they’re not willing to abide by federal law.” The Ball State case did not last 13 years. But it has upset many for other reasons. In 2008, federal investigators looking into a complaint about sex discrimination in the athletic department at Ball State discovered that a large number of coaches of women’s teams had recently resigned or been fired. The detail caught the investigators’ attention, but rather than look into the issue, the office asked Ball State to run its own inquiry into whether the departures were part of a discriminatory pattern. **Schools that find themselves the subject of a complaint can cut an investigation short by signing an agreement with the Office for Civil Rights. In many cases, the agreements do not include specific changes to the programs. Instead, the office asks the schools to investigate themselves and report their findings months, and sometimes years, later**. In the case of Ball State, the office asked the university to investigate itself even though it was being sued by a former tennis coach, Kathy Bull, who was making similar allegations. According to Bull’s lawyers, 12 head coaches of Ball State’s 11 women’s teams have left since 2005, compared with five head coaches of men’s teams in the same period. Less than two weeks after the Office for Civil Rights asked the university to investigate the issue, it reported back that it had found “no evidence” of discrimination. Ball State used the same law firm that was representing the university in Bull’s lawsuit to prepare its report to the Office for Civil Rights. **The university did not conduct any new research into the firings, and none of the former coaches were interviewed, according to a deposition of** [**Jo Ann Gora**](http://cms.bsu.edu/About/AdministrativeOffices/President/Bio.aspx)**, the university president, by Bull’s lawyers.** “I did not think that was necessary,” she said. A spokeswoman for Ball State said that the university does not comment on active litigation and that it is cooperating with the Office for Civil Rights. She said the law firm that prepared the university’s report, did not violate any rules of professional conduct by representing the university in both the Bull lawsuit and the O.C.R. inquiry. Ali said her office had not approved Ball State’s report and added that federal investigators returned to the campus earlier this year to look into the matter. They plan to make another trip during the fall semester. She said the office prodded the university to provide locker rooms to several women’s teams after it was discovered that female athletes were changing in their cars and a storage shed. Still, she defended the practice of allowing universities to conduct their own investigations. “The university is in the best position to know — assuming good will — to know what its needs are for hiring and terminating,” she said. “And it’s their obligation to ensure that that doesn’t happen in a discriminatory manner.” But Marissa Pollick, Bull’s lawyer, questioned whether the office should always assume such good will. “**You’re relying on the universities to comply when they have very strong interests not to,” she said.**

### ACLU Title XI

#### Sexual harassment isn’t protected under Title Xi [a2 harrassment PIC]

**The ACLU:** The American Civil Liberties Union [Organization that sues for justice and writes about the law] “Title XI And Sexual Violence in Schools.” *The ACLU.* No date. RP

**Sexual violence in schools and on campus is a pressing civil rights issue: when students suffer sexual assault and harassment, they are deprived of equal and free access to an education. Title IX of the Education Amendments of 1972 is a federal civil rights law that prohibits discrimination on the basis of sex in any education program or activity that receives federal funding. Title IX is a powerful tool for students who want to combat sexual violence at school and on college campuses. Under Title IX, discrimination on the basis of sex can** include sexual harassment**, rape, and sexual assault**. TITLE IX STATES: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." The Women’s Rights Project, in collaboration with [Students Active For Ending Rape (SAFER)](http://www.safercampus.org/) — a national nonprofit that empowers students to hold colleges accountable for sexual assault in their communities — has put together the [fact sheet](https://www.aclu.org/womensrights/edu/37025res20081002.html), [podcast series](https://www.aclu.org/multimedia/audio/39180res20090326.html), and other resources on this page to get the word out to student activists about how they can use Title IX as an effective tool for change. **Under the requirements of Title IX schools receiving federal funds have a legal obligation to protect students from gender-based violence and harassment** – including sexual assault. Use this to find out more about schools’ obligations under Title IX and students’ rights. The Women’s Rights Project has participated in a number of court cases in which courts have taken important steps to hold schools accountable for ignoring sexual harassment or sexual assault that they knew about in school or on campus. A federal court rejected Arizona State University’s (ASU) argument that it was not responsible under Title IX when a campus athlete raped a student, even though it had previously expelled the athelte for severe sexual harassment of multiple other women on campus. The case settled and ASU agreed to appoint a statewide Student Safety Coordinator who will review and reform policies for reporting and investigating incidents of sexual harassment and assault, and award the plaintiff $850,000 in damages and fees. A federal court found that there was sufficient evidence to suggest that the University of Colorado (CU) acted with “deliberate indifference” with regard to students Lisa Simpson and Anne Gilmore, who were sexually assaulted by CU football players and recruits. The University settled the case and agreed to hire a new counselor for the Office of Victim’s Assistance, appoint an independent Title IX advisor, and pay $2.5 million in damages. The United States Supreme Court held that public school students may challenge sex discrimination under both Title IX and the Constitution’s Equal Protection Clause. Schools and colleges around the country are waking up to the power of Title IX to combat sexual violence on campus. **School administrators can't afford to ignore Title IX.** April is Sexual Assault Awareness Month and students across the country are protesting sexual assault on campus by holding Take Back the Night rallies. "There have been reforms and efforts to improve the climate for study for women in colleges and graduate programs through mechanisms like Title IX enforcement around sexual harassment issues.  However, there is a lot of blockage in the system when it comes to women fulfilling their dreams.  There are very high rates of sexual harassment reported by female students in colleges and universities and graduate programs as well as in elementary and secondary education."

### Fang

#### Polls go Aff.

**Fang:** Fang, Marina [Contributor, The Huffington Post] “Most College Students Want Free Speech on Campuses – But Not When It’s Hate Speech.” *Huffington Post.* April 2016. RP

**College students want free speech on their campuses but want their administrators to intervene when it turns into hate speech, though they disagree on whether college campuses are open environments and on how the media should cover campus protests, according to a new Gallup survey on the First Amendment released Monday.** About 78 percent of students surveyed said that colleges should allow “all types of speech and viewpoints**,” while 22 percent noted that “colleges should prohibit biased or offensive speech in the furtherance of a positive learning environment.”**

### Carle

#### Free speech is key to giving liberals a foothold back in the academy before all is lost – otherwise, the alt-right will keep growing – the impact is racism, sexism, and authoritarianism.

**Carle:** Carle, Robert [Robert Carle is a professor of theology at The King’s College in Manhattan. Dr. Carle is a contributor to Society, Human Rights Review, Public Discourse, World, Touchstone, The Federalist, and Reason.com.] “How The American Academy Helped Create The Alt-Right.” *The Federalist.* December 2016. RP

**American academics are rightly** [**alarmed**](http://columbiaspectator.com/news/2016/11/09/after-trump-victory-some-professors-move-postpone-midterms) **by the ascendance of the alt-right and its entrenchment in American politics. The alt-right includes nativists, conspiracists, isolationists, Putinists, white nationalists, and masculinists**. The alt-right is pessimistic about the ability of people of different races and religions to live together, and is hostile to both legal and illegal immigrants. Alt-right websites warn against the dangers of miscegenation and criticize the pro-life movement as [“dysgenic”](http://www.radixjournal.com/journal/2016/4/8/the-pro-life-temptation) because it encourages breeding by “the least intelligent and responsible” women. **But American academics have been slow to acknowledge how dependent the leaders of the alt-right are upon playbooks that they learned on university campuses. These leaders are not southern Klansmen. The president of the** [**National Policy Institute**](http://www.npiamerica.org/) **graduated from the University of Chicago. The founder of** [**American Renaissance**](http://www.amren.com/) **graduated from Yale**. Over the past 50 years, universities have replaced the Enlightenment ideal of a common humanity with a vision of an America divided into warring races and classes. They have purged their schools of the Enlightenment liberals (“dead white males”) who trained earlier generations to defend universal values over tribal values. Today, students on college campuses are much more likely to read identitarians like Lani Guinier and Marxists like Howard Zinn than to read John Locke, Adam Smith, and David Hume. In this environment, [working-class white men](http://blogs.wsj.com/economics/2016/10/05/working-class-white-men-are-falling-further-and-further-behind-college-graduates/) have come to see themselves as an economically and politically marginalized tribe. Had colleges and universities stood up for liberal concepts such as free speech and our common humanity, the alt-right would not have gained a foothold in our culture**. Instead, our universities have become cesspools of identity politics, censorship, and moral relativism. For a generation now, American academics have been punishing any hint of identitarianism on the Right while defending even the most** [**hateful**](http://www.dartreview.com/eyes-wide-open-at-the-protest/) **tribal, identitarian movements on the Left**. Breitbart editor Milo Yiannopoulos [writes](http://www.breitbart.com/tech/2016/03/29/an-establishment-conservatives-guide-to-the-alt-right/), “It was this double standard, more than anything else, that gave rise to the alternative right. It’s also responsible, at least in part, for the rise of Donald Trump.” **Political correctness has trivialized the concepts of bigotry and racism so that they have lost much of their stigma. When** [**a sombrero and tequila party**](http://students.bowdoin.edu/bsg/bsg/statement-of-solidarity-re-tequila-party/) **can get you punished as a racist, then racism becomes a meaningless concept.** [Leftists](https://www.youtube.com/watch?v=_ul2OuvPOQE) who label Mitt Romney and John McCain as racists lose the moral authority to label anyone a racist. Activists who [demonize](http://www.breitbart.com/tech/2016/11/03/lena-dunham-posts-video-celebrating-the-extinction-of-white-men-on-twitter/) white cis-gender men weaken the stigma against demonizing other groups. The debasement of intellectual life in the American academy was demonstrated by [a hoax](http://www.physics.nyu.edu/faculty/sokal/lingua_franca_v4/lingua_franca_v4.html) that New York University physicist Alan Sokal performed on his colleagues in 1996. Sokal submitted an article entitled, “Transgressing the Boundaries: Toward a Transformative Hermeneutics of Quantum Gravity,” to *Social Texts,* a leading, peer-reviewed journal of cultural studies. His paper claimed gravity is merely a social construct, an instrument of phallocentric hegemony. *Social Texts* published the article, exposing its editors to national ridicule. They “liked my article,” Socal [explained](http://www.physics.nyu.edu/faculty/sokal/lingua_franca_v4/lingua_franca_v4.html), “because they liked its conclusion that the content and methodology of postmodern science . . . supports the progressive political project.” In the past 20 years, Sokal-inspired sting operations have succeeded in getting [dozens](http://science.sciencemag.org/content/342/6154/60) of spoof articles published in dozens of leading academic journals. **Colleges and universities facilitate extremism when they promote illiberal and unconstitutional speech codes that punish students and faculty for controversial speech. The Foundation for Individual Rights in Education (FIRE) has compiled a** [**list of 316 speakers**](https://www.thefire.org/resources/disinvitation-database/) **who have been disinvited from college speaking engagements because some members of their communities have objected to their points of view.** On the list of the disinvited are Condoleezza Rice, Ayaan Hirsi Ali, Christine Lagarde, John Brennan, Kathleen Parker, and Jason Riley. Talented comedians like [Chris Rock](https://www.thefire.org/chris-rock-explains-doesnt-want-perform-college-campuses/) no longer perform on college campuses because of the censorious campus culture. In October, Yiannopoulos was disinvited from speeches he was to deliver at Columbia and New York universities because the universities feared attacks on LGBT and other minority groups. [Yiannopoulos calls](http://www.wsj.com/articles/some-students-frustrated-after-nyu-cancels-milo-yiannopoulos-speech-1477086642) this rationale “garbage.” Yiannopoulos is openly gay, ethnically Jewish, and has never promoted violence. “The only person really at risk at any of my talks is me,” Yiannopoulos said. **In 2010, an Association of American Colleges and Universities** [**survey**](http://www.aacu.org/sites/default/files/files/core_commitments/engaging_diverse_viewpoints.pdf) **found that only 16.7 percent of faculty members strongly agree with the statement that they “feel safe to hold unpopular views on campus.” Witch hunts against academics who express any kind of heterodox views have become routine on college campuses**. In February 2015, for example, Northwestern University’s feminist film professor Laura Kipnis wrote [an article](http://www.chronicle.com/article/Sexual-Paranoia-Strikes/190351/) for the *Chronicle of Higher Education* criticizing Title IX policies. The university subjected Kipnis to hours of grilling about her essay and the ideas underlying it. Kipnis was not permitted to have a lawyer present during her hearings, but she was allowed to have a colleague present. Kipnis chose Stephen Eisenman, the head of the Faculty Senate. When Eisenman told the Faculty Senate that he believed Kipnis’s investigation was a threat to academic freedom, Eisenman was brought up on charges of violating Title IX as well. [Kipnis wrote](http://chronicle.com/article/My-Title-IX-Inquisition/230489/), “It is astounding how aggressive . . . assertions of vulnerability have gotten in the past few years . . . Most academics I know— feminists, progressives, minorities, gays—live in fear of some classroom incident spiraling into professional disaster.” In September 2016, NYU implemented a [bias reporting hotline](http://www.nyu.edu/about/policies-guidelines-compliance/equal-opportunity/bias-response.html) by which students can anonymously report professors and classmates for perceived speech offenses. NYU professor [Michael Rectenwald writes](https://www.washingtonpost.com/posteverything/wp/2016/11/03/campus-pc-culture-is-so-rampant-that-nyu-is-paying-to-silence-me/?utm_term=.c381f1aad660) that this turned “every classroom encounter into a potential infraction and figures students as Soviet-style monitors of ideological conformity.” This year, when students who support Donald Trump started chalking Trump’s name on campus sidewalks, schools responded by [comparing the chalking to mass murder](http://www.thedailybeast.com/articles/2016/03/24/emory-university-students-think-donald-trump-is-out-to-kill-them.html). At the University of California at San Diego, for example, the provost sent an email to students threatening the school’s “fullest sanctions” against the chalkers. Never mind that UCSD’s policies [explicitly state](https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/04/12/uc-san-diego-provost-expects-the-fullest-sanctions-for-pro-trump-anti-illegal-alien-sidewalk-chalking/?utm_term=.7e9c4e29cef9) chalking is permitted “on sidewalks of the university grounds that are exposed to weather elements.” The Left’s tendency to shame and silence its opponents is ultimately self-defeating, “When has anyone been persuaded by being insulted or labelled?” British comedian [Jonathan Pie](https://www.youtube.com/watch?v=GLG9g7BcjKs) says. “That’s why people wait until they are in the voting booth. No one is watching anymore. There’s no blame or shame, and you can finally say what you really think and that’s a powerful thing.” If academics are concerned about the degraded state of American politics, they should begin engaging, debating, and discussing politics with their political opponents instead of setting up echo chambers where only progressive points of view are allowed. **The American experiment in human liberty depends upon universities that transmit to future generations respect for free speech and open and honest debate. To sustain our republic, we need desperately to recover the healthy intellectual habit of learning from opinions that we find offensive.** A people that ceases to educate in freedom will cease to live in freedom.

### Harkinson

#### White supremacy is back and stronger than ever and it’s searching for recruits in our colleges – the alt-right has been energized in the status quo, due to safe spaces on campus.

**Harkinson:** Harkinson, Josh [Reporter and contributor, Mother Jones] “The Push to Enlist ‘Alt-Right’ Recruits on College Campuses.” *Mother Jones.* December 2016. RP

**How much support is there for the loose-knit coalition of white nationalists and other far-right extremists known as** [**the "alt-right"**](http://www.motherjones.com/politics/2016/11/trump-white-nationalists-hate-racism-power)**?** Despite a spike in media coverage for the movement in the wake of Donald Trump's victory, a recent conference hosted by **white nationalist Richard Spencer, who coined the term "alt-right**," drew only about 275 attendees in Washington, DC. And after [a video](http://www.theatlantic.com/politics/archive/2016/11/richard-spencer-speech-npi/508379/) from the event went viral, showing audience members giving Nazi salutes to Spencer's cry of "hail Trump," the movement faced a fierce backlash. Although Trump named [alt-right hero](http://www.motherjones.com/politics/2016/08/stephen-bannon-donald-trump-alt-right-breitbart-news) Stephen Bannon as his chief White House strategist, the president-elect went on to disavow the alt-right—in general terms, at least—in an interview with the New York Times. **The movement** [**gained momentum online in 2016**](http://www.motherjones.com/politics/2016/11/trump-white-nationalists-hate-racism-power) **but is no longer just** [**about social media**](http://www.demographicspro.com/insights/trump-supporters-follow-white-nationalists-on-twitter)**, says Spencer; he sees a need to prove that the alt-right can attract supporters in the real world. And he says the best place to do that is on college campuses, starting with a speech he plans to deliver on Tuesday on the campus of Texas A&M University**. "People in college are at this point in their lives where they are actually open to alternative perspectives, for better and for worse," Spencer says. **"I think you do need to get them while they are young**. I think rewiring the neurons of someone over 50 is effectively impossible." **Recruiting on college campuses has long been a goal for "academic racists" such as Jared Taylor and Peter Brimelow, a white nationalist** whom Spencer helped bring to Duke University for an event in 2007, [when Spencer was a student there](http://www.motherjones.com/politics/2016/10/richard-spencer-trump-alt-right-white-nationalist). **In May, Spencer and other white nationalists set up a "safe space" on the University of California-Berkeley's Sproul Plaza to discuss "how race affects people of European heritage.**" He claims that he will be giving two more speeches about the alt-right at universities in California. "**The left just owns academia through and through," Spencer says, "so I think it is important to go to the belly of the beast and not let them own it.**" In recent months, **Breitbart News pundit Milo Yiannopoulos'** "Dangerous Faggot Tour" drew crowds at college campuses around the country. **Several colleges canceled scheduled talks by Yiannopoulos because of "security concerns." Yiannopoulos does not label himself "alt-right" but has characterized the movement as a legitimate response to political correctness. He often describes white males as victims of "reverse discrimination" and speaks euphemistically of defending "Western values**." [A talk that he gave on the alt-right](https://www.youtube.com/watch?v=-7-dAmdy-JE) at the University of Houston in September drew cheers and a chant invoking the name of the alt-right mascot Pepe the Frog. "That was a revelation for me," Spencer said about Yiannopoulos' talk. "What we are doing is known to people, it's edgy and dangerous, it's cool and hip. It's that thing our parents don't want us to do. So that was definitely a huge inspiration." University campuses historically have incubated a range of social movements, from Marxism to multiculturalism on the left to right-wing movements such as neoliberalism and fascism, including [Nazism in Germany](https://www.facinghistory.org/holocaust-and-human-behavior/chapter-5/controlling-universities) ([and in the United States](https://www.insidehighered.com/news/2009/06/17/nazism)). More recently, several groups sympathetic to the alt-right have cropped up on some college campuses: Identity Evropa [describes itself](https://www.identityevropa.com/#home) as "a generation of awakened Europeans who have discovered we are part of the great peoples, history, and civilization that flowed from the European continent" and who "oppose those who would defame our history and rich cultural heritage." Founded in February by 30-year-old ex-Marine Nathan Damigo, a junior social science major at California State University-Stanislaus, the group has been active on several California campuses. Its supporters [have plastered campuses](http://www.thedailybeast.com/articles/2016/10/10/veteran-posts-signs-at-colleges-telling-whites-to-be-great-again.html) and [downtown areas](https://itsgoingdown.org/fascist-group-identity-evropa-begins-poster-campaign-antifa-respond/) with posters featuring slogans such as "Let's Become Great Again" and "Serve Your People" superimposed over images or European Renaissance art. Most college professors who teach classes about race and identity "haven't done their homework," [says Damigo](http://www.motherjones.com/politics/2016/11/trump-white-nationalists-hate-racism-power), who, like Spencer, [promotes](https://www.identityevropa.com/human-biological-diversity/) pseudoscientific theories about cognitive differences between the races. Most of his members, he says, are recent college graduates who discovered racialist ideas on their own and now aim to "mentor" younger students while "waging a culture war" on the ivory tower: "We want to have a constant presence there," he says. "We want to normalize our ideas and get to the point where we can push faculty into incorporating this literature into the lectures and into the educational program." In November, Damigo and more than two dozen Identity Evropa members [attended](https://twitter.com/IdentityEvropa/media?lang=en) Spencer's conference. As a student at Maryland's Towson University in 2012, Matthew Heimbach founded a "white student union." The group conducted night patrols to look for ["black predators,"](http://www.vice.com/video/white-student-union) according to Vice, and brought "race realist" Jared Taylor to speak on campus. Another white student union was formed in 2013 by Georgia State University student [Patrick Sharp](http://www.huffingtonpost.com/2013/08/08/white-student-union-patrick-sharp-past_n_3718997.html), an active member of the neo-Nazi website Stormfront. The "white student union" model has been [promoted](http://www.dailystormer.com/white-student-unions-its-time-for-fliers/) by alt-right media outlets; since then, more than 30 white student union pages have popped up on Facebook, though [many are believed to be hoaxes](http://www.nytimes.com/2015/11/25/us/white-student-union-groups-set-off-concerns-at-campuses.html). After graduating in 2013, Heimbach and his father-in-law founded the Traditionalist Youth Network, a white nationalist group cloaking itself in "traditionalism" that has allied with neo-Nazi and neo-Confederate groups, according to [research](https://www.splcenter.org/fighting-hate/extremist-files/individual/matthew-heimbach) from the Southern Poverty Law Center. In June, members of the TYN's affiliated Traditionalist Worker Party joined the group Golden Gate Skinheads for a demonstration in Sacramento that [turned violent](https://www.splcenter.org/hatewatch/2016/06/27/violent-clashes-erupt-sacramento-between-white-nationalists-and-antifascists), sending five people to the hospital with stab wounds. Like other figures affiliated with the alt-right, Heimbach idolizes Russian President Vladimir Putin. "Russia is our biggest inspiration," he recently [told](http://www.nytimes.com/2016/12/03/world/americas/alt-right-vladimir-putin.html) the New York Times. "I see President Putin as the leader of the free world." Though the campus group Students for Trump ostensibly focused on electing and supporting Trump, at least one chapter has openly embraced white nationalist rhetoric and causes. The [Facebook page](https://www.facebook.com/PSU4TRUMP/) of the group's Portland State University chapter posted an infographic called "[What Does White Genocide Look Like](https://www.facebook.com/PSU4TRUMP/posts/925071100970776)," "[White Lives Matter](https://www.facebook.com/PSU4TRUMP/photos/a.772977822846772.1073741828.752648528213035/859094717568415/?type=3&theater)" memes, and a [quote](https://www.facebook.com/PSU4TRUMP/photos/a.772977822846772.1073741828.752648528213035/859223847555502/?type=3&theater) from former Rhodesian Prime Minister Ian Smith about how "colonialism is a wonderful thing." In a counterprotest to a student union demonstration against arming campus police, Students for Trump held up signs reading "Thug Lives Don't Matter." **PSU Students who spoke out against Students for Trump were reportedly** [**targeted online**](https://thinkprogress.org/how-students-for-trump-terrorized-portland-state-university-88396c06c743#.3t8eo3f1n) **by anonymous accounts with racist slurs and death threats, according to ThinkProgress.**

### Matsuda

#### Allowing speech for particular groups fails to do anthing when that group is hateful to OTHER SUBORINDATED GROUPS [a2 pic for white people]

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

**What of hateful racist and anti-Semitic speech by non-whites? The phenomena of one subordinated group inflicting racist speech upon another subordinated group is a persistent and touchy problem**. Simi- larly, members of a subordinated group sometimes direct racist lan- guage at their own group. The victim's privilege becomes problematic when it is used by one subordinated person to lash out at another. **While I have argued here for tolerance of hateful speech that comes from an experience of oppression, when that speech is used to attack a subordinated-group member, using language of persecution, an adopting a rhetoric of racial inferiority, I am inclined to prohibit such speech. History and context are important in this case because the custom in a particular subordinated community may tolerate racial insults as a form of word play**.224 Where this is the case, community members tend to have a clear sense of what is racially degrading and what is not. The appropriate standard in determining whether language is persecutorial, hateful, and degrading is the recipient's community standard. **We should avoid further victimization of subordinated groups by misunderstanding their linguistic and cultural norms.**

### Leonard

#### Only free speech is consistent with the ideal of the university – a marketplace of ideas allows good ideas to compete with bad ones.

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American University.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

**Even the most ardent proponents of speech codes on campuses will agree that restrictions on expression are a departure from the normal university climate.3' Freedom of thought, inquiry, and ex- pression have come to be regarded as indispensable to the fulfillment of the modern university's mission**. Of course, the "mission" of the university is not a monolithic concept. **Institutions of higher learning are dedicated to the advancement of knowledge through scholarship and research and to the equally important task of educating students**. In either case, free expression plays a critical role. **We can identify three specific roles which freedom of thought and speech play in the modern university. First, and most importantly, it sustains a "mar- ketplace of ideas" which promotes the creation of new knowledge and critical thinking.** Second, it protects individual autonomy and dignity. Finally, a rule of free expression teaches members of the university community a sense of tolerance that is essential to the functioning of a diverse society. Without exception, the paramount value of the university is the advancement of knowledge. Although the principle of unfettered academic inquiry has not always prevailed in American higher edu- cation, and does not apply in some situations,32 **there is little doubt that the concept of unrestricted debate in search of the truth has become an ethic of higher education**. To that end, we have converted our institutions into "common markets" of ideas without barriers to the free flow of theory, thought, hypothesis, and claims of certainty or §kepticism 33 Ideas must compete with each other on their own merit though a process of open communication and free debate. **Like many others, I have an unwavering faith that good ideas will eventually prevail over the bad ones in a fair competition.**34 My greatest fear is that our commitment to seeking knowledge wherever it may lie will first be compromised and then destroyed by well-intentioned attempts to promote other values within the university environment.

#### Free speech develops tolerance – even hate speech should be allowed.

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American University.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

**Finally, an ethic of free expression in our universities can also imbue faculty and students with a sense of tolerance in dealing with others. Dean Lee Bollinger argues that protection of speech, especially extremist speech no matter how hurtful and valueless of itself, creates an example of toleration "the purpose of which is to develop and demonstrate a social capacity to control feelings evoked by a host of social encounters**.' '48 Although this role of free expression has been a "neglected insight,"' 49 many pronouncements of the Supreme Court carry this view implicitly. For example, Justice Holmes' admonition that this liberty must include not only "free thought for those who agree with us but [also] freedom for the thought we hate"50 reflects a recognition that toleration of the views of others is a necessary ingredient in our mix of liberties. **Hence the act of tolerance, even of the most extreme and hateful speech, allows us to focus upon our reaction to the speech rather than its content. It permits us to construct a frame of mind that develops the qualities of self-restraint, compromise, and separation from belief that are necessary to the operation of social institutions**.5 Indeed, the growing diversity of American society makes an ethic of toleration all the more essential. **In many ways, our universities, like our nation, have become an undissolved amalgam of races, religions, creeds, ethnicities, and ideologies where differences count more than common traits. In such an environment, universities would do well to promote an ethic of tolerating differences, even unpopular ones.**

#### Speech which disrupts school activities and makes learning impossible isn’t constitutionally protected.

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American University.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

An additional point should be made at the risk of stating the obvious. **The concept of free expression does not strip university authorities of the power to prevent conduct such as disruption of classes and events which impedes the mission or goal of the school. In *Healy v. James,* a decision which protected student rights of expression, the Court was careful to note that "where state-operated educational institutions are involved, the Court has long recognized 'the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safe- guards, to prescribe and control conduct in the schools.**"' Still we should not make too much of this point. **So long as a university punishes equally the disruptive student who screams racial epithets in class and the one who cries out "moderation in all things!" or "long live civility,!" the principle of free expression is preserved.**

#### Free speech on campuses better addresses the reason hate speech exists in the first place – empirics prove that allowing free speech means people destroy racist ideas themselves.

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American Univiersity.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

**Perhaps the archetypal example of offensive speech was the theories of the late Professor William Shockley of Stanford University**. Shockley was a brilliant physicist who was awarded a Nobel prize for his work in transistorization in 1956. Later in his career, however, he tired of electrical engineering and began to focus on the link between genetics and cognitive ability. 7 **His theory, in essence, was that intelligence is hereditary, that blacks were less intelligent than whites and that heredity, therefore, made futile any attempt to correct such differences**.5 8 It was not Shockley's theories alone which caused him to be vilified. Shockley was poised for action: he proposed that potential parents with IQ's under a certain threshold be paid, on a voluntary basis, not to reproduce. Many took this as a lace curtain plan for genocide given that blacks tended to score lower on IQ tests than whites5. **Shockley was often invited to speak or engage in debates on university campuses; and, he was often kept from doing so by disruptive audiences or hostile university administrations. On one occasion, organized disruption prevented his participation in a scheduled debate at the Yale Political Union even though the debate had been organized at the suggestion of Roy Innis, the chairman of the Congress of Racial Equality.** 60 Innis apparently felt that a nationally televised clash of views would be beneficial. 61 The invitation to Shockley was eventually rescinded after pressure and threats by several student organizations. **In contrast, Professor Stephen Carter has recounted his experience as a black Stanford undergraduate of watching a debate between Shockley and two others that he described as a "a rabble rousing psychologist who happened to be black and a world-renowned geneticist who happened to be white**.' 6a Carter explained that he approached the debate with much trepidation, and must have felt more as he watched Shockley make "mincemeat"' ' of the psychologist. **However, Carter then watched-the geneticist make Shockley look like an amateur. Carter concluded: [I] began to wonder what all the talk of dangerousness was about .... It was then that I began to perceive the possibility that justice, even in the sense of winning the battle against racism, would come only from confronting the truth .... The point [was] not that Shockley's arguments were correct-they were nonsense- but rather that the decision to dismiss them, . . . should have been made on the ground of scientific error, not on the ground of racist effect.** Put otherwise, the mere fact that his theories were unattractive should have had no bearing on whether they were accepted as true. **We cannot know how many students at Yale and other universities were deprived of a similar opportunity to see the clash of controversial ideas and walk away with a better understanding of their beliefs. John Stuart Mill, the 19th century philosopher, wrote in On Liberty that even wrong ideas have the beneficial effect of forcing us to re- examine and better understand our challenged beliefs."** Mill's argu- ment, it appears, has aged well.

#### Limiting any speech sets a precedent that allows the abolition of ANY controversial idea [a2 PICs]

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American Univiersity.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

**Proponents of speech restrictions, in contrast, tend to think that the damage done to the process of free inquiry would not be significant. The gist of these arguments is that bigoted thought constitutes only a small portion of the speech that enters the marketplace of ideas** and at any rate is so valueless that its absence would have little effect on the advancement of knowledge. In the short term this may be true. **Much of campus life remains unaffected by speech restraints. Once a wall is breached, though, the next attempt is easier. Abolition of hateful thoughts suggests that expressions may be censored if they are sufficiently offensive**. **Certainly there are ideas other than bigotry which deeply offend major segments of our society, for example, proposals for or against abortion, gun control, flag burning, euthanasia, and Marxism. The same logic that supports the suppression of derogatory speech just as easily allows for the suppression of a range of ideas. Any concession which would limit free expression, no matter how well intentioned, opens the door to more limitations.**

#### Speech codes get circumvented, or are enforced in a draconian manner.

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American University.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

**Indeed, the chances that a speech code will be used as a scourge of conformity are even greater than we may at first recognize. Such codes are written in words that are inherently vague. What does it mean to say that public statements must not be "intimidating" or "hostile?" When does an expression "degrade" or "demean?" Nor can we reasonably expect that any speech code be drafted with such exacting detail that vagueness is put to rout. The coupling of a mean spirit with human inventiveness guarantees that there will be an unending flow of offensive thoughts and invective so long as human society continues. Inevitably, someone or some group on the university campus must be vested with the discretion to determine whether ideas or words are offensive or harmful. Such a concentration of power in one place increases the risk that an orthodoxy will be established and again, proves right Lord Acton's dictum that power corrupts.** Moreover, we must not forget that the attitudes of the person exer- cising such discretion are subject to change over time. There is no guarantee against a resurgence of conservative censorship like that rejected in *Keyishian* and *Sweezy.*

#### Speech codes do NOTHING to change attitudes on campus or deter hate speech.

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American University.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

**A final argument against thought codes is that at best they do not work and at worst they will worsen racial and other tensions**. In an editorial entitled *The Two Percent Solution,* Mary Rouse, the Dean of Students at the University of Wisconsin-Madison, pointed out that there are three elements to any program designed to create a welcome environment for traditionally excluded students. First and second, a university must establish proper standards of conduct for interpersonal relationships and must educate students about diversity and racism. She calculated that these efforts accounted for 30 and 68 percent, respectively, of an institutional strategy to combat bigotry. **Discipline of students whose conduct violates such standards, accord- ing to Rouse, accounts for** only two percent **of the overall strategy." If Rouse's calculations correctly reflect that speech codes and other behavioral controls play a minor role in the process of creating a more hospitable campus, then we should have little trouble in dismissing them as a costly, nearly pointless trespass into the precincts of free expression.** Furthermore, I suspect that champions of speech codes overestimate their value. **There is no evidence that campuses have become gentler places since the imposition of speech codes**. Of course, the codes as a whole are a recent phenomenon and we lack experience with them over time. **However, other places do have a track record with censorship of racist speech. Great Britain has out- lawed racial defamation since *1965,76* yet neo-Nazi groups such as the National Front still flourish. I likewise suspect that speech codes have little power to effect the changes in attitude on campuses that their sponsors desire.**

#### Speech codes cause backlash.

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American University.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

#### In fact, the effect of the codes will probably be negative. The one certain reaction to thought codes is resentment. We should not be surprised when students and others react to the yoke of censorship with contempt and derision. As a general matter, people reject paternalistic attempts to control their thoughts and to order their relationships with others. Speech codes communicate an unstated assumption that students cannot be trusted to interact with members of other groups without the benevolent guidance of the campus authorities. Nor should we deceive ourselves by thinking that the backlash will be confined to the archetypal "white male" student. Surely the black law student at Michigan who called a classmate "white trash" must have felt immeasurable resentment at having to write a humiliating letter of apology. It is doubtful that a sense of equality will emerge from an atmosphere of resentment against university paternalism.

#### Speech codes fracture the collective – they focus on differences among students, which makes collective movements impossible.

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American University.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

**In the long term, resentment over thought control will probably harden into a cynical view of a university organized along group lines. Speech codes invariably turn on racial or other group classifications. They serve as a constant reminder not only of differences among students, but also of the university's acceptance of demography as a proper basis for organizing academic society.** Even the least perceptive student understands that the university's concern with protecting the educational environment of an individual student extends only to discouraging embarrassing incidents of bigotry. **Speech codes offer no protection to those who are subjected to personal abuse short of prejudicial behavior. It is a short step from this observation, at least from the perspective of a young college student, to the conclusion that one's** rights depend in part on group affiliation. This reasoning, of course, lacks a mature perspective of the nature and history of group relations in our society, the need for incorporating all persons into the mainstream, and simply the intellectual and personal pleasure of knowing others unlike ourselves. **Still we should not be surprised at the prevalence of this attitude. A strategy of achieving conditions of equality on campus that emphasizes differences over shared values is hardly promising and probably doomed.**

#### Speech codes make speakers of hate speech into martyrs, with their ideas more publicized.

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American University.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

**As well as the possibility of backlash, there is a great risk that speech codes will have the ironic effect of publicizing and glorifying the very ideas which the censors would abolish. Professor Nadine Strossen has argued cogently that attempts at suppressing racist speech (and by implication other forms of discriminatory expression) generate publicity and attention that the speaker would never have attracted on his or her own. There is some psychological evidence that attempts by government to censor speech makes it more appealing to many,' and may even transform censored speakers into martyrs.** Although I am wary of basing law or policy on psychological theory,8 2 I have personally observed how censorship can glorify the most abominable thoughts. **When I was an undergraduate at the University of North Carolina in the early 1970's, the Student Union issued an invitation to David Duke to participate in a speakers series. At that time Duke was a full-sheet Ku Klux Klan leader who had not yet attained national prominence. He never got the chance to speak.** His presentation was drowned out by the chants of student protesters. Had he been allowed to speak, I am sure that he would have presented a racist, anti-semitic explanation for America's falling star, sanitized for presentation to a university audience. Duke on his own would have attracted modest media attention and then have left campus, soon forgotten."3 **As it turned out, he left town a well-publicized martyr in the cause of free speech.** Fortunately, the sympathy for David Duke faded quickly. However, unlike particular speakers, speech codes are a fixture of campus society. Glorification of censored speech is a risk that we endure as long as the censorship continues.

#### Speech codes just force the problem underground.

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American University.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

**Perhaps the most insidious effect of thought restrictions is the removal of offensive thought from public view. I know of no one who argues that speech codes alone will eliminate discriminatory feelings or achieve a condition of equality and harmony on campus. In fact, it is likely that speech restrictions alone will only alter the choice of words or the forum for discussion.** The most blatantly offensive words will disappear; but in their place will come more subtle forms of discourse and newer modes of expression. **The most hateful expressions will be driven underground where they will exist undetected. Surely the values of equality and harmony will be better served when offensive thoughts are exposed to the public and their speakers are forced to answer to public criticism and disapproval. And surely the ugliness of a thought is a reason to expose rather than hide it.**

#### Speech codes don’t stop racist IDEAS from spreading – sanitized expressions are even worse than epithets.

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American University.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

**Even then, controlling epithets alone will contribute little toward a harmonious campus environment. Epithet restrictions may soften the expressions of hatred in some ways. Still they do not insulate students from the pain of a more nicely phrased statement. For example, I wonder if a black student would regard the following statement as any less offensive than a common epithet: "Black Americans are inherently inferior to whites in intelligence** and capacity for work and other organized behavior. Their presence in this nation is a historical accident which the government should act now to correct by forced repatriation to Liberia." Such is the sort of sanitized, undirected statement which would be permitted in many if not all circumstances under the Wisconsin and Stanford rules. **I cannot imagine that it is any less grievous for a black student to hear the above instead of a standard slur. In fact, the calm, respectable facade of such a statement will probably cause its effects to linger longer than the ring of an epithet. Nor can we stop enterprising bigots from using code words or gleefully converting their banter into respectfully phrased derogatory comments.**

#### Speech codes chill non hate speech – people fear misunderstanding and won’t speak up.

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American University.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

**A** **final concern is the discretion that must be assigned to the authorities which administer etiquette codes. Someone must be able to determine what is derogatory. I doubt that anyone can compile a complete canon of offensive remarks that is sufficient to cover all encounters which will be evaluated under the etiquette codes** (although there would be no lack of volunteers with dubious motives). Most allegations of offensive speech will need to be judged in context; but here the difficulties will be insurmountable. **Is offensiveness to be judged by the intent of the speaker? By the perceptions of the complainant? By the reaction of a reasonable person**? Perhaps by the reaction of a reasonable member of the group implicated by the alleged slur? We should ask ourselves whether we truly want university officials determining what constitutes reasonable behavior for a par- ticular group. **The standards that emerge from the etiquette codes are likely to be so vague that some students will avoid intergroup contact altogether rather than risk an actionable misunderstanding. Others will keep their conversations on a safe, superficial level.**

### Wise

#### Limiting hate speech just causes it to go underground, making it more dangerous.

**Wise:** Wise, Tim [Timothy Jacob "Tim" Wise is an American anti-racism activist and writer. Since 1995, he has given speeches at over 600 college campuses across the U.S.] “Hate Speech Codes Will Not End Racism and Hate Crimes.” *Opposing Viewpoints.* 2007. RP

**To begin with, speech codes have always seemed the easy way out: the least costly, most self-righteous, but ultimately least effective way to address racism. First, such codes only target, by necessity, the most blatant forms of racism—the overtly hateful, bigoted and hostile forms of speech embodied in slurs or perhaps neo-Nazi symbolism—while leaving in place, also by necessity, the legality of more nuanced, high-minded, and ultimately more dangerous forms of racism. So racist books like The Bell Curve, which argues that blacks are genetically inferior to whites and Asians, obviously would not be banned under hate speech codes (nor should they be), but those racists who were too stupid to couch their biases in big words and footnotes would be singled out for attention: in which case, we'd be punishing not racism, per se [for itself], or even racist speech, but merely the inarticulate expression of the same. racist speech that carried with it the implied threat of violence**. Whether or not a neo-Nazi symbol of a movement that celebrates Adolph Hitler qualifies in that regard, is the issue to be resolved; but certainly it should not be seen as obvious that any and all speech is protected, just because of the right to free speech in the abstract. Highlight Notes Delete I**n turn, this kind of policy would then create a** false sense of security**, as institutions came to believe they had really done something important, even as slicker forms of racism remained popular and unaddressed. Furthermore, such policies would also reinforce the false and dangerous notion that racism is limited to the blatant forms being circumscribed by statute, or that racists are all obvious and open advocates of fascism, rather than the oftentimes professional, respectable, and destructive leaders of our institutions: politicians, cops, and bosses, among others.**

#### Speech codes misdiagnose the problem – they view it as an individual phenomenon.

**Wise:** Wise, Tim [Timothy Jacob "Tim" Wise is an American anti-racism activist and writer. Since 1995, he has given speeches at over 600 college campuses across the U.S.] “Hate Speech Codes Will Not End Racism and Hate Crimes.” *Opposing Viewpoints.* 2007. RP

Secondly, **hate speech codes reinforce the common tendency to view racism on the purely individual level—as a personality problem in need of adjustment, or at least censure—as opposed to an institutional arrangement, whereby colleges, workplaces and society at large manifest racial inequity of treatment and opportunity, often without any bigotry whatsoever. So, for example, racial inequity in the job market is perpetuated not only, or even mostly by overt racism—though that too is still far too common—but rather by way of the "old boy's networks," whereby mostly white, middle class and above, and male networks of friends, neighbors and associates pass along information about job openings to one another**. And this they do, not because they seek to deliberately keep others out, but simply because those are the people they know, live around, and consider their friends. **The result, of course, is that people of color and women of all colors remain locked out of full opportunity**. Likewise, students seeking to get into college are given standardized tests (bearing little relationship to academic ability), which are then used to determine in large measure where (or even *if*) they will go to college at all; this, despite the fact that these students have received profoundly unstandardized educations, have been exposed to unstandardized resources, unstandardized curricula, and have come from unstandardized and dramatically unequal backgrounds. As such, lower income students and students of color—who disproportionately come out on the short end of the resource stick—are prevented from obtaining true educational equity with their white and more affluent peers. **And again, this would have nothing to do with overt bias, let alone the presence of neo-Nazis at the Educational Testing Service or in the admissions offices of any given school.**

#### Speech codes distract away from structural problems, and prevent resistance to racism – people would backlash against the racists otherwise.

**Wise:** Wise, Tim [Timothy Jacob "Tim" Wise is an American anti-racism activist and writer. Since 1995, he has given speeches at over 600 college campuses across the U.S.] “Hate Speech Codes Will Not End Racism and Hate Crimes.” *Opposing Viewpoints.* 2007. RP

**In other words, by focusing on the overt and obvious forms of racism, hate speech codes distract us from the structural and institutional changes necessary to truly address racism and white supremacy as larger social phenomena. And while we could, in theory, both limit racist speech and respond to institutional racism, doing the former almost by definition takes so much energy (if for no other reason than the time it takes to defend the effort from Constitutional challenges), that getting around to the latter never seems to follow in practice. Not to mention, by passing hate speech codes, the dialogue about racism inevitably (as at Bellarmine) gets transformed into a discussion about free speech and censorship, thereby fundamentally altering the focus of our attentions, and making it all the less likely that our emphasis will be shifted back to the harder and more thoroughgoing work of addressing structural racial inequity.** Perhaps most importantly, even to the extent we seek to focus on the overt manifestations of racism, **putting our emphasis on ways to limit speech implies that there aren't other ways to respond to overt bias that might be more effective and more creative**, and engage members of the institution in a more thoroughgoing and important discussion about individual responsibilities to challenge bigotry. **So instead of banning racist armbands, how much better might it be to see hundreds of Bellarmine students donning their own come spring: armbands saying things like: "F... Nazism," "F... Racism**," or, for that matter, "F... You, Andrei" (hey, free speech is free speech, after all). That a lot of folks would be more offended by the word 'f...,' both in this article and on an armband, than by the political message of Chira's wardrobe accessory, of course, says a lot about what's wrong in this culture, but that's a different column for a different day. The point here is that such messages would be a good way to test how committed people at Bellarmine really are to free speech, and would also send a strong message that racism will be met and challenged *en masse*, and not just via anonymous e-mails. In other words, if Chira is free to make people of color uncomfortable, then others are sure as s... free to do the same to him and others like him. Otherwise, freedom of speech becomes solely a shield for members of majority groups to hide behind, every time they seek to bash others.

### Kurtz

#### The Aff is bipartisan and popular across various ideologies.

**Kurtz:** Kurtz, Stanley [Contributor, National Review] “A Plan to Restore Free Speech on Campus.” *The Corner.* December 2015. RP

**While it is true that a great many faculty members have rejected classic liberal values, other faculty — and especially many students — have not**. To a considerable extent, a willful faction of students and allied faculty has succeeded in intimidating the larger number of students who continue to adhere to classic liberalism. **Our goal must be to marshal support from the broader public for this weakened and wavering yet potentially powerful majority of students. We need a program that can simultaneously energize a movement of students on campus and marshal concrete support from the broader public. The greatest advantage enjoyed by supporters of free speech is that the public outside of the universities — liberals and conservatives alike — continues to uphold the ideal of intellectual freedom**. The most powerful way to activate that support is by way of state university systems. **State legislatures have the ability to establish and reinforce the core values of their respective university systems, and any such initiatives would have consequences far beyond public institutions.**

#### Possible plan – adopt freedom of expression codes.

**Kurtz:** Kurtz, Stanley [Contributor, National Review] “A Plan to Restore Free Speech on Campus.” *The Corner.* December 2015. RP

First: **Colleges and universities ought to adopt a policy on freedom of expression modeled on Yale’s Woodward Report of 1974, which identifies ensuring intellectual freedom in the pursuit of knowledge as the primary obligation of a university. While the Woodward Report forthrightly acknowledges the importance of solidarity, harmony, civility, and mutual respect to campus life, it unmistakably marks these values as subordinate in priority to freedom of expression. In accordance with this, the Woodward Report rejects the proposition that members of an academic community are entitled to suppress speech they regard as offensive**. Of course, within a university, the need for intellectual freedom is in the service of the pursuit of knowledge. Freedom of expression is a critical consideration, yet does not in itself fully resolve issues like the structure of the college curriculum. **That said, the Woodward Report can and should serve as a model for statements on free expression at our colleges and universities. Once adopted, new statements on freedom of expression would supersede and replace any pre-existing speech codes.**

### Curwen

#### Protests on campus are key to activism and change – it resists racism and changes overarching structures.

**Curwen:** Curwen, Thomas [Contributor, LA Times] “What’s Different About The Latest Wave of College Activism?” *LA Times.* November 2015. RP

**If the University of Missouri was the spark, then the fire didn't take long to spread. Since the resignation of its president and chancellor Nov. 9, protesters have organized at more than 100 colleges and universities nationwide**. Social media sites have lighted up with voices of dissent, and what began as a grievance has evolved into a movement. **Inspired by the marches in Ferguson, Mo., and Black Lives Matter, students are taking to social media to question the institutions they once approached for answers**. Calling for racial and social reforms on their campuses, they are borrowing tactics of the past — hunger strikes, sit-ins and lists of demands — and have found a collective voice to address their frustrations, hurt and rage. Their actions seem to have hit the mark. Last week, the dean of students at Claremont McKenna College left the university after students protested her comments to a Latina student with the offer to work for those who "don't fit our CMC mold." **Tuesday night, Jonathan Veitch, the president of Occidental College, said he and other administrators were open to considering a list of 14 reforms,** including the creation of a black studies major and more diversity training, that student protesters had drawn up. Students at USC have similarly proposed a campuswide action plan, which includes the appointment of a top administrator to promote diversity, equity and inclusion. Nationwide, complaints of racism and microaggression are feeding Facebook pages and websites at Harvard, Brown, Columbia and Willamette universities, as well as at Oberlin, Dartmouth and Swarthmore colleges. Protesters at Ithaca College staged a walkout to demand the president's resignation, and Peter Salovey, president of Yale University, announced a number of steps, including the appointment of a deputy dean of diversity, to work toward "a better, more diverse, and more inclusive Yale." **For decades, students have helped drive social change in America, if not the world**. Campuses, said University of California President Janet Napolitano, have "historically been places where social issues in the United States are raised and where many voices are heard." **Over the decades, student protests have shifted attitudes in the country on civil rights and the Vietnam War, nuclear proliferation and apartheid, and some of today's actions are borrowing from tactics of the past.** Although some of the strategies may seem familiar, it is the speed and the urgency of today's protests that are different. "What is unique about these issues is how social media has changed the way protests take place on college campuses," said Tyrone Howard, associate dean of equity, diversity and inclusion at UCLA. "A protest goes viral in no time flat. With Instagram and Twitter, you're in an immediate news cycle. This was not how it was 20 or 30 years ago." Howard also believes that the effectiveness of the actions at the University of Missouri has encouraged students on other campuses to raise their voices. "A president stepping down is a huge step," he said. "Students elsewhere have to wonder, 'Wow, if that can happen there, why can't we bring out our issues to the forefront as well?'" Shaun R. Harper, executive director of the University of Pennsylvania's Center for the Study of Race and Equity in Education, agrees. The resignation of two top Missouri administrators, Harper said, showed students and athletes around the country that they have power they may not have realized before. The protests show "we're all together and we have the power to make the change we deserve," said Lindsay Opoku-Acheampong, a senior studying biology at Occidental. "It's affirming," said Dalin Celamy, also a senior at the college. "It lets us know we're not crazy; it's happening to people who are just like you all over the country." Celamy, along with other students, not only watched the unfolding protests across the country, but also looked to earlier protests, including an occupation of an administrative building at Occidental in 1968. Echoes of the 1960s in today's actions are clear, said Robert Cohen, a history professor at New York University and author of "Freedom's Orator," a biography of Mario Savio, who led the Free Speech Movement at UC Berkeley in the 1960s. "The tactical dynamism of these nonviolent protests and the public criticism of them are in important ways reminiscent of the 1960s," Cohen said. "Today's protests, like those in the '60s, are memorable because they have been effective in pushing for change and sparking dialogue as well as polarization." Although the targets of these protests are the blatant and subtle forms of racism and inequity that affect the students' lives, the message of the protests resonates with the recent incidents of intolerance and racial inequity on the streets of America. There is a reason for this, Howard said. Campuses are microcosms of society, he said, and are often comparable in terms of representation and opportunity. "So there is a similar fight for more representation, acceptance and inclusion." The dynamic can create a complicated and sensitive social order for students of color to negotiate. "Latino and African American students are often under the belief if they leave their community and go to colleges, that it will be better," Howard said. "They believe it will be an upgrade over the challenges that they saw in underserved and understaffed schools. But if the colleges and universities are the same as those schools, then there is disappointment and frustration." In addition, Howard said, when these students leave their community to go to a university, they often feel conflicted. "So when injustice comes up," he said, "they are quick to respond because it is what they saw in their community. On some level, it is their chance to let their parents and peers know that they have not forgotten the struggle in the community." On campuses and off, Harper, of the University of Pennsylvania center, finds a rising sense of impatience among African Americans about social change. "As a black person, I think black people are just fed up. It's time out for ignoring these issues," he said. While protests in the 1960s helped create specific safeguards for universities today, such as Title IX, guaranteeing equal access for all students to any educational program or activity receiving federal financial assistance, a gap has widened over the years between students and administrators over perceptions of bias. **Institutions often valued for their support of free speech find themselves wrestling with the prospect of limiting free speech, but to focus on what is or isn't politically correct avoids the more important issue,** Cohen said: whether campuses are diverse enough or how to reduce racism. Occidental student Raihana Haynes-Venerable has heard criticism that modern students are too sensitive, but she argues that subtle forms of discrimination still have a profound effect. She pointed to women making less than men and fewer minorities getting jobs as examples. "This is the new form of racism," she said.

### Lipson

#### Trigger warnings on campus are infinitely expandable – anything can hypothetically trigger anyone, so requiring one before a lesson means teachers can’t teach.

**Lipson:** Lipson, Charles [Contributor, Real Clear Politics] “Social Justice Warriors Against Free Speech.” *Real Clear Politics.* August 2016. RP

**First, let's consider trigger warnings. There is absolutely nothing wrong with a professor or teaching assistant saying, "We are going to discuss Greek myths and some of you might find them troubling." But it’s also perfectly fine if, all of a sudden in a class on Greek myths, the professor discusses one. The students at Columbia University actually wanted warnings before all myth**s. Their demand was not about helping one or two students in a large class. It was simply bullying under the cloak of "sensitivity." Anyway, universities are all about discussing sensitive subjects and raising troubling questions. If a university is really vigorous, then the whole place should be wrapped in a gigantic trigger warning. Finally, as a teacher, how can I possibly anticipate all the things that might trigger students in my class on "Big Wars From Ancient Greece to Early Modern Europe" (a lecture course I am teaching next year)? **When I mention the Roman war with German tribes on the Rhine, how can I know that your grandfather died fighting on the Rhine in World War II? Of course, if your grandfather did die fighting on the Rhine, or if your mother was named Jocasta and you accidentally slept with her, you might be triggered by the class discussions.** What then? Well, that is why universities have mental-health professionals to help you deal with your anxieties, fears, and depression. **Again, it is fine if professors want to give students a heads-up, but it is a mistake to demand it of everyone**. It is a much bigger mistake to stifle class discussion for fear of offending. That's not hypothetical. That is exactly what happens in classrooms now. (So does ideologically rigid teaching that demands students repeat the professor's views. But that's another topic for another day.) Safe spaces are another ruse. Are they really the only places where marginalized groups will feel completely free to voice their opinions, as these fashionable liberal-arts students say? We need to distinguish among three kinds of places on campus: classrooms, public spaces, and private (or semi-private) places like sororities or campus houses for co-religionists. If classrooms do not invite free expression, then something is badly wrong with the university. Actually, some classrooms do not. They are almost always the classrooms run by the ideological comrades of the students demanding safe spaces. If you think diverse viewpoints are welcome in classes for race and gender studies, you are living in a dream world. In public spaces, like dining halls, people do sometimes group themselves voluntarily by race, sports, or dormitories. Nothing wrong with that, although persistent segregation by race, ethnicity, or religion would be a setback for the students' college experience. Finally, it is perfectly fine for people to find their cozy spaces privately, at Hillel House (for Jewish students) or Calvert House (for Catholics) or a fraternity, sorority, or club. Who invades those private spaces? Normally it’s Social Justice Warriors from the Dean's Office who object to students wearing sombreros to a party featuring Mexican food. Of course universities should provide mental-health support for individuals who are genuinely troubled. They should. **What about the argument that "safe spaces aren't about banning dissenting viewpoints but about banning hateful, bigoted speech that is truly harmful"? The obvious problem is this: Who decides? You think your march is to support women's reproductive rights. Your roommate thinks it is about killing unborn babies. Which position is hateful or bigoted? Again, who decides? Which of these is so hateful that it has no place in an academic community?**

#### Demarcation of “hate speech” has serious line drawing problems – no solvency.

**Lipson:** Lipson, Charles [Contributor, Real Clear Politics] “Social Justice Warriors Against Free Speech.” *Real Clear Politics.* August 2016. RP

**But let's take the clear-cut example of racial epithets, which *are* hate speech and add nothing to academic debate or learning. They do cause emotional harm, or at least they can. The difficulty here is "Where do we draw the line?" and, again, "Who draws it?" Is it hate speech to say, "He hates to spend money. What a Jew"? Most Jews would say yes, that's hateful. What if I said, "He hates to spend money. What a Scotsman"? Most Scots would say that recognizes their financial prudence. It is precisely because drawing these distinctions is so hard that our First Amendment, as interpreted by the courts, gives very wide latitude to speech and draws the line at specific threats to individuals and other palpable dangers. Canada, by contrast, has laws barring insults to minorities. (So do most European countries.) That's why a book arguing that Canadian Muslims were not assimilating and some were becoming radicals was prohibited and its authors harshly fined.** The author and publisher spent years, and hundreds of thousands of dollars, trying to reverse that ruling. **In the U.S., the book sold well, though you probably never heard about it. Muslim-Americans seemed to survive it. There is real hate speech, of course, but you and I might not agree on what it is. And we might not agree on who gets to decide. I don't want some mid-level bureaucrat in the campus housing-and-dining office telling me what I cannot say or wear to a party.** Get over it. By the way, the Yale professors who told students exactly that -- try not to be bothered by Halloween costumes you don't like -- were vilified, screamed at, taunted, and ultimately run out of their jobs in the housing system. Irony alert: They were brutally harassed by the sensitivity police. Why not take the straightforward position and prohibit only hate speech that violates the First Amendment? That’s the same speech prohibited on the streets bordering the university. The only alteration I would make is this: Universities should not permit shouting down and disrupting speakers on campus. That stifles speech and debate.

### Puzder

#### Allowing free speech is a stance towards change – it allows activism that speech codes have shut down – acting now is key while we still can.

**Puzder:** Puzder, Andy [Chief Executive Officer, CKE Restaurants. Also a former activist] “The Importance of Free Speech on Campus.” *Real Clear Politics.* December 2015. RP

**As a former student protester from the '60s, I believe there is no better place for open debate and free expression than the campus quad.** I fully support America’s youth exploring outlandish ideas because I believe our values can withstand the comparisons and will be stronger because of them. But, what’s happening on our campuses from Mizzou to Yale to Claremont-McKenna is different and disturbing. Student activists seem to lack any real understanding of what empowers them to promote their concepts of diversity and tolerance. As the product of a public education from a different era, I was taught that America was a unique nation in world history because it was based on the concepts of equality and liberty as set forth in our Declaration of Independence; equality before God and the liberty to live your life as you choose as long as you don’t interfere with the rights of others. These values led to the Civil War as slavery is incompatible with equality before God. As President Lincoln queried, the question was whether “a nation conceived in Liberty and dedicated to the proposition that all men are created equal . . . can long endure.” Equality before God won, evolving over time to equality of opportunity (as most people understand it today). **It’s that notion of equality that has been at the core of every civil rights struggle from racial equality to women’s’ rights and, more recently, gay rights. In order to defend these values, each individual must hold certain inalienable rights upon which government cannot infringe. Perhaps the most important is the right of free speech.** Its value comes from both the ability of every individual to freely express their views and the inability of any individual or group to suppress opposing views. Disturbingly, students today seem to have lost touch with the importance of free speech and view it as an obstacle to achieving their goals. **At the University of Missouri, a student photographer covering protests of alleged racism faced a group of students chanting “Hey hey, ho ho, reporters have got to go.” The photographer protested that “This is the First Amendment that protects your right to stand here and mine. . . . The law protects both of us.” An assistant professor of mass media (really) responded: “Who wants to help me get this reporter out of here? I need some muscle over here**.” When asked about this effort to “muscle” a student journalist away from a public event, the vice president of the Missouri Students Association responded: "I personally am tired of hearing that First Amendment rights protect students when they are creating a hostile and unsafe learning environment for myself and for other students here." At Yale, a college official told students that offensive Halloween costumes should not be taken seriously stating that: “After all, free speech and the ability to tolerate offence are the hallmarks of a free and open society.” A very vocal student’s response: “You should not sleep at night! You are disgusting.” And “Walk away, he doesn’t deserve to be listened to.” Continuing this trend, the student government at Wesleyan University voted to cut funding for the 150-year-old campus newspaper because it published an opinion piece by a conservative writer questioning the tactics of the Black Lives Matter movement, although not the merits. At Amherst, students insisted that the university punish individuals who posted flyers on the importance of free speech. Why are these students so disconnected from the very right upon which their freedom stands? One explanation: A recent survey by the American Council of Trustees and Alumni of 1,100 colleges and universities found that a mere 18 percent required courses in American history or government, where the place the First Amendment and free speech hold in our hierarchy of values might have been explained and understood. Lacking this understanding, a recent Pew Research Center poll found that 40 percent of American millennials (ages 18-34) support government prevention of public statements offensive to minorities. Only around a quarter of Gen Xers (27%) and baby boomers (24%) and roughly one-in-ten in the Silent Generation (12%) said the government should be able to prevent such speech. Perhaps most disturbing has been the reaction of college administrators (apologies and resignations) which seem to all but concede the legitimacy of student attempts to suppress free speech. Of course, no college administrator wants to appear to be a racist and there’s nothing wrong with people examining their actions and apologizing if their motives were misguided. But, the issues here go beyond racism. Colleges should be addressing the needs and strengths of a free society well before an inflamed group of students tramples the rights of others in the name of diversity and tolerance. **You don’t change peoples’ minds by stopping them from speaking theirs. Rather than labeling dissenting views as hate speech or trigger warnings, colleges would better serve their students by emphasizing that a free society can only remain free if there is genuine respect for open thought and free expression**. That you can only achieve genuine diversity when people are free to say what they think regardless of political correctness. Otherwise, our campuses will become bastions of conformity rather than learning. **This is the discussion we should be having on college campuses,** while we still have the freedom to do so.

### Shuchman

#### Limits on free expression create learned helplessness – people are unable to think outside of the bubble colleges create.

**Shuchman:** Shuchman, Daniel [Chairman of the Foundation for Individual Rights in Education] “Free Thought Under Siege.” *The Wall Street Journal.* November 2016. RP

**Rancorous trends such as microaggressions, safe spaces, trigger warnings and intellectual intolerance have taken hold at universities with breathtaking speed.** Last year’s controversy over Halloween costumes at Yale led to the departure of two respected faculty members, and this year made the fall festival a flashpoint of conflict at campuses across the country. The recent explosion in the number of university administrators, coupled with an environment of perpetual suspicion—the University of Florida urges students to report on one another to its “Bias Education and Response Team”—drives students who need to resolve normal tensions in human interaction to instead seek intervention by mediators, diversity officers, student life deans or lawyers. **As Frank Furedi compellingly argues in this deeply perceptive and important book, these phenomena are not just harmless fads acted out by a few petulant students and their indulgent professors in an academic cocoon. Rather, they are both a symptom and a cause of malaise and strife in society at large. At stake is whether freedom of thought will long survive and whether individuals will have the temperament to resolve everyday social and workplace conflicts without bureaucratic intervention or litigation. Mr. Furedi, an emeritus professor at England’s University of Kent, argues that the ethos prevailing at many universities on both sides of the Atlantic is the culmination of an infantilizing paternalism that has defined education and child-rearing in recent decades. It is a pedagogy that from the earliest ages values, above all else, self-esteem, maximum risk avoidance and continuous emotional validation and affirmation**. (Check your child’s trophy case.) Helicopter parents and teachers act as though “fragility and vulnerability are the defining characteristics of personhood.”**The devastating result: Young people are raised into an “eternal dependency.”** Parenting experts and educators insist that the views of all pupils must be unconditionally respected, never judged, regardless of their merit. They wield the unassailable power of a medical warning: **Children, even young adults, simply can’t handle rejection of their ideas, or hearing ones that cause the slightest “discomfort,” lest they undergo “trauma.”** It is not surprising to Mr. Furedi that today’s undergraduates, having grown up in such an environment, should find any serious criticism, debate or unfamiliar idea to be “an unacceptable challenge to their personas.” **He cites a legion of examples from across the Western world, but one Brown University student perhaps epitomizes the psyche: During a campus debate, she fled to a sanctioned “safe space” because “I was feeling bombarded by a lot of viewpoints that really go against my dearly and closely held beliefs.”**

#### The neg reifies a police culture – speech codes allow wide discretion to punish at will – their subjectivity means that ANYTHING can be prohibited, creating a slippery slope.

**Shuchman:** Shuchman, Daniel [Chairman of the Foundation for Individual Rights in Education] “Free Thought Under Siege.” *The Wall Street Journal.* November 2016. RP

**The new demands for “balancing” free speech with sensitivity and respect have several unifying themes, according to Mr. Furedi. One is that they are based on the subjective sensitivities of anyone who claims to be offended. If words can cause trauma and are almost akin to violence, an appeal to health and safety guarantees that “the work of the language police can never cease.”** Microaggressions, by definition, are committed unconsciously and without intent. **Since “it is almost impossible to refute an allegation of microaggression,” the author views them as the ultimate “weaponisation” of offense- taking. Emory University students, for instance, demanded redress for their “genuine concern and pain” after seeing the name of a major presidential candidate written in chalk on campus, an incident proving “that** in a world where anything can be triggering, people will be triggered by anything.” There is a “beguiling” appeal to well-intentioned calls for civility and respect, Mr. Furedi says. After all, “sensitivity is an attractive human feature and essential for minimising conflict.” He cites the Chancellor of the University of California at Berkeley’s seemingly benign exhortation that “we can only exercise our right to free speech insofar as we feel safe and respected.” Yet Mr. Furedi convincingly demonstrates that, by ranking liberty on par with or subordinate to other values, “the deification of the commandment ‘Do Not Offend’” transforms fundamental liberties into liberties “contingent on other people’s sensibility.” **Freedom becomes a “negotiable commodity” that inexorably will be bargained away.** Ironically, Mr. Furedi observes, for a movement that claims to be driven by concern for individual empowerment, respect and autonomy, the new campus values actually represent an astonishingly pessimistic and condescending view of the ability of human beings to deal with the basic challenges of life. They are premised on the “supposition that people lack the intellectual or moral independence to evaluate critically the views to which they are exposed.” **As a practical matter, the notion that human dignity mandates protection from the pain of “hurtful” speech is “possibly the most counterproductive” rationale for constraining freedom; “people acquire dignity” by learning to deal with “the problems that confront them,**” not by relying on the “goodwill” of an administrative elite. Throughout history, the impulse to censorship has been driven by political or religious zealotry. In the 21st century, Mr. Furedi posits, speech suppression has assumed the mantle of mental-health therapy. But policing actual speech and books is not sufficient. **In today’s environment, no matter what you say, it is exclusively the “individual who is hurt or offended . . . who decides what you really meant.” Thus people’s inner lives and imputed motivations, even unconscious ones, have become “legitimate terrain for intervention” by authorities. In an unprecedented twist, students themselves are agitating for the imposition of campus thought control**. Academic freedom is not an academic matter, Mr. Furedi reminds us. It “has a vital significance for the quality of public life.” A generation of litigious college graduates, seeking protection from new ideas and afraid to take any risks, is an ominous glimpse into the future of our public life.

### Delgado

#### Hate speech isn’t constitutionally protected

**Delgado:** Delgado, Richard [J.D. University of California, Berkeley, 1974. Professor of Law, UCLA Law School.] “WORDS THAT WOUND: A TORT ACTION FOR RACIAL INSULTS, EPITHETS, AND NAME-CALLING.” *Harvard Civil Rights Civil Liberties Law Review.* Volume 17. 1982. RP

**The government also has an interest in regulating the use of words harmful in themselves. In *Chaplinsky v. New Hampshire*, the United States Supreme Court stated that words which "by their very utterance inflict injury or tend to incite an immediate breach of the peace" are not protected by the first amendment.241** **Racial insults, and even some of the words which might be used in a racial insult, inflict injury by their very utterance**. 2 Words such as "nigger" and "spick" are badges of degradation even when used between friends; these words have no other connotation.

### Maloney

#### Free speech limits on campus destroy democratic values.

**Maloney:** Maloney, Cliff, Jr. [Contributor, TIME Magazine] “Colleges Have No Right to Limit Students’ Free Speech.” *TIME.* October 2016. RP

**In** **grade school, I learned that debate is defined as “a discussion between people in which they express different opinions about something.” Such open discourse was historically encouraged on our college campuses. Universities exemplified intellectual discussion and debate in America.** No one voiced their opinions louder than students, professors and administrators**. They pushed society’s limits by admitting women and people of color, and by encouraging diversity of thought amongst the college community. Historically, young people flocked to universities to learn more about the world around them, to encounter people from different backgrounds, to expand their minds and to form their own opinions**. Unfortunately, things have changed. **Recently on college campuses, our open discourse has been threatened, particularly when discussing politics**. While the current presidential election represents polarizing wings of both the Democratic and Republican parties, we should be able to openly debate their policies and the direction in which they plan to take our country if elected. We should be able to discuss the abuse of power within our government and the consistent violations of our Bill of Rights. We should be able to participate in the free market of ideas. **But our students are being silenced. University campuses are now home to a plethora of speech restrictions**. From sidewalk­sized “free­speech zones” to the criminalization of microaggressions, **America’s college campuses look and feel a lot more like an authoritarian dictatorship than they do the academic hubs of the modern free world.** When rolling an inflated free­speech ball around campus, students at the University of Delaware were halted by campus police for their activities. **A Young Americans for Liberty leader at Fairmont State University in West Virginia was confronted by security when he was attempting to speak with other students about the ideas he believes in**. A man at Clemson University was barred from praying on campus because he was outside of the free­ speech zone. And a student at Blinn College in Texas abolished her campus’ free­speech zone in a lawsuit after administrators demanded she seek special permission to advocate for self­defense. **How have we let this happen in America, the land of the free? It’s because of what our universities have taught a generation of Americans: If you don’t agree with someone, are uncomfortable with an idea, or don’t find a joke funny, then their speech must be suppressed.** Especially if they don’t politically agree with you**. Instead of actually debating ideas that span topics from the conventional to the taboo, a generation of American students don’t engage, they just get enraged. In doing so, many students believe that they have a right to literally shut other people up . This is not only a threat to the First Amendment, but also to American democracy.** In their manifestation, safe spaces and free­speech zones at public universities enable prejudice against unfavorable ideologies. **Guised as progressive measures to ensure inclusion, these often unconstitutional policies exclude new and competing ideas, and are antithetical to a free academia**. In excluding different ideologies, supposedly progressive campus speech codes do one thing: prevent the progression of ideas. Restrictive campus speech codes are, in fact, regressive. With over 750 chapters nationwide at Young Americans for Liberty, we are fighting against public universities that stifle free speech. We’ve launched the national Fight for Free Speech campaign to reform unconstitutional speech codes and abolish these so­ called free­speech zones on college campuses. By hosting events such as large free speech balls, YAL chapters across the country are petitioning their campuses to adopt the University of Chicago’s principles on freedom of expression —the hallmark of campus speech policies. Our members have geared up with First Amendment organizations to ensure that their free speech rights on campus are protected. **America is a land rooted in the ideas of a free society: the freedom to be who you are, to speak your mind and to innovate**. **By silencing our students and young people, we have started down a slippery slope. It is up to us to fight back to ensure that our First Amendment rights remain protected—not just on college campuses, but everywhere in America.**

### Giroux

#### Higher education is under assault – college campuses no longer represent a free space of thought, but have become an outgrowth of neoliberalism and casino capitalism – educators bear the obligation to restore critical thinking to challenge dominant ideology.

**Giroux:** Giroux, Henry A. [Waterbury Chair Professor, Pennsylvania State University] “Higher Education and the Promise of Insurgent Public Memory.” *Truthout.* March 2015. RP

**At a time when both political parties, anti-public intellectual pundits and mainstream news sources view the purpose of higher education almost exclusively as a workstation for training a global workforce, generating capital for the financial elite, and as a significant threat to the power of the military, corporate and ultra-rich, it becomes more difficult to reclaim a history in which the culture of business is not the culture of higher education**. This is certainly not meant to suggest that higher education once existed in an ideal past in which it only functioned as a public good and provided a public service in the interest of developing a democratic polity. Higher education has always been fraught with notable inequities and anti- democratic tendencies, but it also once functioned as a crucial reminder of both its own limitations and the potential role it might play in attacking social problems and deepening the promise of a democracy to come. **As difficult as it may seem to believe, John Dewey's insistence that "democracy needs to be reborn in each generation, and education is its midwife" was once taken seriously by many academic leaders. (2) Today, it is fair to see that Dewey's once vaunted claim has been willfully ignored, forgotten or made an object of scorn**. (3) Throughout the 20th century, there have been flashpoints in which the struggle to **shape the university in the interest of a more substantive democracy was highly visible. Those of us who lived through the 1960s remember a different image of the university. Rather than attempt to train MBAs, define education through the lens of mathematical utility, indoctrinate young people into the culture of capitalism, decimate the power of faculty and turn students into mindless consumers, the university presented itself as a site of struggle**. That is, it served, in part, as a crucial public sphere that held power accountable, produced a vast array of critical intellectuals, joined hands with the antiwar and civil rights movements and robustly challenged what Mario Savio once called "the machine" - an operating structure infused by the rising strength of the financial elite that posed a threat to the principles of critique, dissent, critical exchange and a never-ending struggle for inclusivity. The once vibrant spirit of resistance that refused to turn the university over to corporate and military interests is captured in Savio's moving and impassioned speech on December 2, 1964, on the steps of Sproul Hall at the University of California, Berkeley: **There is a time when the operation of the machine becomes so odious, makes you so sick at heart, that you can't take part; you can't even tacitly take part. And you've got to put your bodies upon the gears, upon the wheels, upon the levers, upon all the apparatus and you've got to indicate to the people who run it, to the people who own it, that unless you're free the machine will be prevented from working at all.** (4) **The 1960s may have been the high point of that period in US education in which the merging of politics, justice, civil rights and the search for truth made clear what it meant to consider higher education as a democratic public sphere**. Not everyone was pleased or supported this explosion of dissent, resistance to the Vietnam War and struggle to make campuses across the United States more inclusive and emancipatory. **Conservatives were deeply disturbed by the campus revolts and viewed them as a threat to their dream worlds of privatization, deregulation, militarization, capital accumulation and commodification. What soon emerged was an intense struggle for the soul of higher education.**

#### I impact turn the idea that “bad speech” should be excluded – the rush to drown out specific speech sets a precedent that chills discussion.

**Giroux:** Giroux, Henry A. [Waterbury Chair Professor, Pennsylvania State University] “Higher Education and the Promise of Insurgent Public Memory.” *Truthout.* March 2015. RP

For instance, **the Powell Memo was released on August 23, 1971, and authored for the Chamber of Commerce by Lewis F. Powell Jr., who would later be appointed as a member of the US Supreme Court. (5) Powell identified the US college campus "as the single most dynamic source" for producing and housing intellectuals "who are unsympathetic to the [free] enterprise system." (6) He recognized that one crucial strategy in changing the political composition of higher education was to convince university administrators and boards of trustees that the most fundamental problem facing universities was the lack of conservative educators, or what he labeled the "imbalance of many faculties." (7) The Powell Memo was designed to develop a broad-based strategy, not only to counter dissent but also to develop a material and ideological infrastructure with the capability to transform the US public consciousness through a conservative pedagogical commitment to reproduce the knowledge, values, ideology and social relations of the corporate state. Not only did the Powell Memo understand and take seriously the educative nature of politics, it also realized that if a crisis of economics was not matched by a crisis of ideas, it was easier to reproduce a society in which conformity could be bought off through the swindle of a neoliberal mantra that used the discourse of freedom, individuality, mobility and security to serve the interests of the rich and powerful**. The Powell Memo was the most influential of one of a number of ideological interventions in the 1970s that developed political roadmaps to crush dissent, eliminate tenure and transform the university into an adjunct of free-market fundamentalism. But it certainly was not the first shot fired as part of a larger conservative struggle to shape US higher education. (8)

#### This chilling of democratic ideals has external impacts – it quashes broader social movements and guarantees authoritarianism.

**Giroux:** Giroux, Henry A. [Waterbury Chair Professor, Pennsylvania State University] “Higher Education and the Promise of Insurgent Public Memory.” *Truthout.* March 2015. RP

**Higher education is not going to save the United States from becoming more authoritarian, but its destruction as a democratic public sphere is a crucial signpost as to how far we have tipped over into the nightmare of authoritarianism**. The shutting down of the higher education system as a democratic public sphere is not a definitive marker of defeat. **On the contrary, it suggests the need for a new understanding of politics, one in which the university has a crucial role to play in the struggle to defend radical democracy as the new commons, and education as central to a politics that takes it seriously. The winds are changing and this struggle is coming once again into view**. We see it in Europe with the rise of radical political parties in Spain and Greece that connect the struggle over economic power with the struggle to create new modes of agency, culture, education and ideology, all of which now infuse the linking of politics to larger social movements. In this struggle, there is a need to reclaim an insurgent public memory and the lost or suppressed narratives of older progressive battles in order to both learn from them and to build upon their insights. **This is necessary in order for educators and others to rethink the meaning of politics, reclaim the radical imagination, launch a comprehensive education program that speaks to the concrete issues bearing down on peoples' lives, and develop new political formations capable of merging the various struggles together under the wide banner of a post-capitalist democracy "that serves people over corporations.**" (36) As Tariq Ali has mentioned in a different context, the history of the struggles and suppression of the US working class, Communist Party and other progressive struggles has been erased: "**This is a history that is not emphasized. This wretched neoliberalism has downgraded the teaching of history. It is the one subject they really hate." If education does not become the center of politics, democracy as an ideal and site of struggle will fail to inspire and energize a new generation of young people. And a new wave of domestic terrorism will descend on the United States, already visible in the rise of the police and surveillance state.** At stake here is the need to take seriously Pierre Bourdieu's insistence that too many progressives have underestimated that "**the most important forms of domination are not only economic but also intellectual and pedagogical, and lie on the side of belief and persuasion.**" (37) **It is well worth remembering that politics undermines its pedagogical functions and democratic goals when it underestimates "the symbolic and pedagogical dimensions of struggle" and fails to forge the "appropriate weapons to fight on this front**." (38)

### FIRE

#### First Amendment applies on public campuses.

**FIRE:** State of the Law: Speech Codes,” *FIRE*, accessed 2 Dec 2016, https://www.thefire.org/in-court/state-of- the-law-speech-codes/.

**That the First Amendment applies on the public university campus is settled law**. Public universities have long occupied a special niche in the Supreme Court’s First Amendment jurisprudence. **Indeed, the Court has held that First Amendment protections on campus are necessary for the preservation of our democracy.**

## Neg

### Jefferson

#### The Westboro Baptist Church is racist and homophobic – the founder pretended to be a Civil Rights lawyer just to cash in on the money of minorities.

**Jefferson:** Jefferson, Cord [Contributor, Bet] “Commentary: The Unsurprising Racism of the Westboro Baptist Church.” *Bet.* March 2013. RP

**You’ve seen them on the news holding up signs of ignorance and hate as they protest at the**[**funerals of American soldiers**](http://www.huffingtonpost.com/2012/07/22/westboro-baptist-church_n_1693548.html)**. They claim they are a church and are preaching God’s word, but how is that possible when they hold up signs that read: “Pray for More Dead Soldiers” and “Thank God for AIDS”? We are talking about the notorious, much-reviled ultra-conservative Westboro Baptist “Church” in Kansas that preaches, among other things, that God hates the United States for accepting homosexuality**. In addition to soldiers, they frequently picket at the funerals of famous dead people with their signs. The church members, many of whom are children just following their parents’ lead, stand in protest near the soldiers’ resting places in an effort to stir up trouble. **The**[**Southern Poverty Law Center**](http://www.splcenter.org/get-informed/intelligence-files/groups/westboro-baptist-church)**calls the church a cult and hate group.** There is also a petition on Whitehouse.gov asking the church be [classified as a hate group](http://petitions.whitehouse.gov/petition/legally-recognize-westboro-baptist-church-hate-group/DYf3pH2d) and to lose its IRS tax-exempt status. **For all their notorious hate, though, for the most part the Westboro Baptists have seemed to have only a few mortal enemies in their sights: gays and lesbians and anyone who supports gays and lesbians. As it turns out, however, the Westboro Church’s bigotry may well extend beyond what people think**. Nathan Phelps is a former Westboro Baptist Church member who fled the church in the ‘70s. **Nathan’s father is Fred Phelps, the Westboro Baptist Church’s founder and current leader. According to Nathan, despite the fact that his father, a lawyer by trade, once argued on behalf of civil rights cases, he is still a straight-up racist.** Fred Phelps even received two civil rights awards, the Omaha Mayor's Special Recognition Award and an award by the Greater Kansas City Chapter of Blacks in Government, [according to the Topeka Capital-Journal](http://cjonline.com/indepth/phelps/stories/080394_phelps17.shtml). Just a year later, in 1987, he received an award from the Bonner Springs branch of the NAACP for his "undauntedness" and his "steely determination for justice during his tenure as a civil rights attorney," wrote the Capital-Journal. By the early '90s those awards would seem like a mistake, [based on faxes](http://cjonline.com/indepth/phelps/stories/080394_phelps17.shtml) from the church with Fred’s name on them that were made public: **And on Jan. 11, 1993, a fax, sent out under the Westboro Baptist Church heading labels a local  Black lawyer as an "INCOMPETENT BLACK WH---" and "BLACK TRASH." A fax dated May 22, 1992, called a Black politician a "BLACK THUG," a "CRIMINAL" and a "HOLLIGAN." Nathan said his father is nothing but an old-fashioned, anti-Black hate monger.** [This from U.K. paper the Telegraph](http://www.telegraph.co.uk/news/religion/9913463/My-father-the-hate-preacher-Nate-Phelps-on-escaping-Westboro-Baptist-Church.html): Nate Phelps says the perception in some circles that his father was once this champion of civil rights, railing against discrimination, is laughable. “We would all call Black people ‘DNs’ at home. It stood for Dumb N------ and was our private language,” he says. “**We thought it was clever to call them that in front of them. He was deeply prejudiced, and he believed the Bible said they were cursed.” Nate says Fred Phelps saw an opportunity with the passing of the Civil Rights Act to cash in. “There was a lot of money, and a lot of opportunity,” he says. “And suddenly my father was the man to go to.” In recent weeks, two of Fred Phelps’ granddaughters have followed Nathan’s lead and**[**fled the church**](http://chicago.gopride.com/news/article.cfm/articleid/37789600)**.** **It’s not necessarily surprising to discover that the Westboro Baptist Church is as racist as it is homophobic. But it’s always good to find out what people’s true colors are, especially considering that Fred Phelps was once considered a civil rights crusader decades ago.** Now, here’s hoping the other children being raised in this so-called church can one day find the strength to leave like Nathan and his granddaughters did. But until then, that petition is a good idea.

### Cougar News

#### The Westboro Baptist Church protests on colleges around the country – University of Houston proves.

**The Cougar News:** Cougar News [Main news outlet on University of Houston; online publication] “Westboro Baptist Church to protest on campus.” Cougar News. September 2016. RP

**Protesters from the Westboro Baptist Church, a group infamous for picketing events hosted by nearly every ethnic and cultural group, will stop by UH on Friday. Westboro Baptist plans to protest the Gender Infinity conference from noon until 1 p.m. as part of its “God H8s [trans people] Trannies Preaching Tour,”**[**according to its website**](http://www.godhatesfags.com/fliers/20160831_God-Hates-Trannies-Preaching-Tour-Gender-Infinity-Monstrose-Center-Houston-TX.pdf)**.** The conference is held at the Student Center North and South buildings. The group plans to picket the Montrose Center at 401 Branard Street from 11 to 11:40 a.m. before coming to campus. The [Montrose Center](http://www.montrosecenter.org/hub/) hosts dozens of programs and events to support and empower LGBTQ Houstonians year-round. The Gender Infinity conference, now in its sixth year, aims to bring together and support gender-diverse youths, their parents and psychologists. Via its Facebook page, the LGBTQ Resource Center, which is helping to host the conference, said it is planning a peaceful silent protest and that UH Police Department officers will be in the area. “We want you to know that Westboro is not known to physically engage with anyone, although verbally they can be provocative and hateful,” said a Facebook post on the resource center’s page. Gender Infinity encouraged supporters to contact them before planning to counter-protest the Westboro Baptist picketers. “**We hope the response of our community, in solidarity, will show the world our commitment to advance justice and inclusion with and for transgender, gender diverse and gender expansive persons,”** said a public post on [Gender Infinity’s Facebook page](https://www.facebook.com/genderinfinityorg/?fref=ts). Co-founder and doctoral candidate of social work Becca Keo-Meier administers Cougar Ally Trainings on campus. Co-founder and alumnus Colt Keo-Meier teaches psychology courses at UH, according to the Gender Infinity website. In 2013, Colt Keo-Meier was the [first openly transgender person to graduate](http://www.uh.edu/class/news/archive/2013/may/student-success-meier/) from the College of Liberal Arts and Social Sciences with a Ph.D. Westboro Baptist Church, based in Topeka, Kansas, has recently condemned “Pokémon Go,” country singer Blake Shelton and victims of the Pulse nightclub shooting in Orlando, Florida.

### Chappell

#### The Supreme Court has ruled that Westboro Baptist Church protests are constitutionally protected.

**Chappell:** Chappell, Bill [Bill Chappell is a writer and producer who currently works on [The Two Way,](http://www.npr.org/templates/archives/archive.php?thingId=14562108)NPR's flagship news portal. In the past, he has edited and coordinated digital features for Morning Editionand Fresh Air, in addition to editing the rundown of All Things Considered. He frequently contributes to other NPR blogs, such as [All Tech Considered](http://www.npr.org/blogs/alltechconsidered/) and [The Salt](http://www.npr.org/blogs/thesalt/). Chappell's work at NPR has ranged from being the site's first full-time homepage editor to being the lead writer and editor on the London 2012 Olympics blog, [The Torch](http://www.npr.org/blogs/thetorch/). His assignments have included being the lead web producer for NPR's trip to Asia's [Grand Trunk Road](http://www.npr.org/series/127024473/along-the-grand-trunk-road), as well as establishing the Peabody Award-winning [StoryCorps](http://www.npr.org/series/4516989/storycorps) on NPR.org. In 2009, Chappell was a key editorial member of the small team that redesigned NPR's web site. One year later, the site won its first Peabody Award, along with the National Press Foundation's Excellence in Online Journalism award.] “Supreme Court Sides With Westboro Church On Funeral Protests.” NPR. March 2011. RP

**The First Amendment protects the right of the Westboro Baptist Church to hold anti-gay protests outside military funerals, the Supreme Court ruled Tuesday. The 8-1 ruling backs an appeals court decision to**[**throw out a $5 million victory for Albert Snyder**](http://www.npr.org/templates/story/story.php?storyId=130357711)**, who sued the fundamentalist church after its members picketed his son's funeral**. Asked why anyone would bring signs reading "God Hates Fags" and "You're Going to Hell" to a funeral for U.S. military personnel, church leader Rev. Fred Phelps said last year, "When the whole country is given over to sodomy and sodomite enablers ... the country needs this preaching." The Supreme Court ruled that the right to free speech protects Phelps and his church members to express their opinions during military and other high-profile funerals. The lone dissenter in the case, Justice Samuel Alito, wrote that Westboro Baptist has other tools at is disposal to get its message out, from books and articles to emails and websites. But instead, Phelps and his group "launched a malevolent verbal attack on Matthew and his family at a time of acute emotional vulnerability," Alito wrote. Here's an excerpt of his dissent: I fail to see why actionable speech should be immunized simply because it is interspersed with speech that is protected. The First Amendment allows recovery for defamatory statements that are interspersed with nondefamatory statements on matters of public concern, and there is no good reason why respondents' attack on Matthew Snyder and his family should be treated differently. Writing the majority opinion that the church's speech is protected, **Chief Justice John Roberts said the case "turns largely on whether that speech is of public or private concern."** Because most of the church's protesters hold up signs that address the state of the country as a whole, Roberts wrote, "The 'content' of Westboro's signs plainly relates to broad issues of interest to society at large, rather than matters of 'purely private concern.'" Roberts also noted that the church had kept its protesters on public land near the site of Snyder's funeral. From his majority opinion: Westboro believes that America is morally flawed; many Americans might feel the same about Westboro. Westboro's funeral picketing is certainly hurtful and its contribution to public discourse may be negligible. **But Westboro addressed matters of public import on public property, in a peaceful manner, in full compliance with the guidance of local officials. The speech was indeed planned to coincide with Matthew Snyder's funeral, but did not itself disrupt that funeral, and Westboro's choice to conduct its picketing at that time and place did not alter the nature of its speech**. You can read the full opinions [here](http://www.supremecourt.gov/opinions/10pdf/09-751.pdf). The Kansas-based church's practice of picketing funerals has caused controversy and anger. In the aftermath of the deadly Tucson shootings that left Rep. Gabrielle Giffords severely injured, the church raised the ire of many when it planned to take its signs to the funeral for nine-year-old Christina Green. The threat of such a protest led Arizona to quickly enact legislation to ban protests within 300 feet of a funeral. The law also made it illegal for protesters to be present within an hour of the funeral's start or finish. The church eventually decided not to proceed with that protest, after an Arizona radio station promised to give the church airtime in exchange for a promise not to picket Green's funeral.

### Rosenbaum

#### Psychological evidence shows hate speech damages people permanently and is WORSE THAN PHYSICAL HARM– it needs to be banned

**Rosenbaum:** Rosenbaum, Thane [Contributor, The Daily Beast] “Should Neo-Nazis Be Allowed Free Speech?” *The Daily Beast.* January 2014. RP

While what is happening in France and Israel is wholly foreign to Americans, perhaps it’s time to consider whether these and other countries may be right. **Perhaps America’s fixation on free speech has gone too far. Actually, the United States is an outlier among democracies in granting such generous free speech guarantees.** Six European countries, along with Brazil, prohibit the use of Nazi symbols and flags. Many more countries have outlawed Holocaust denial. Indeed, even encouraging racial discrimination in France is a crime. In pluralistic nations like these with clashing cultures and historical tragedies not shared by all, mutual respect and civility helps keep the peace and avoids unnecessary mental trauma. **Yet, even in the United States, free speech is not unlimited. Certain proscribed categories have always existed—libel, slander and defamation, obscenity, “fighting words,” and the “incitement of imminent lawlessness”—where the First Amendment does not protect the speaker, where the right to speak is curtailed for reasons of general welfare and public safety**. There is no freedom to shout “fire” in a crowded theater. Hate crime statutes exist in many jurisdictions where bias-motivated crimes are given more severe penalties. In 2003, the Supreme Court held that speech intended to intimidate, such as cross burning, might not receive First Amendment protection. Yet, the confusion is that in placing limits on speech we privilege physical over emotional harm. Indeed, we have an entire legal system, and an attitude toward speech, that takes its cue from a nursery rhyme: “Stick and stones can break my bones but names can never hurt me.” All of us know, however, and despite what we tell our children, names do, indeed, hurt. **And recent studies in universities such as Purdue, UCLA, Michigan, Toronto, Arizona, Maryland, and Macquarie University in New South Wales, show, among other things, through brain scans and controlled studies with participants who were subjected to both physical and emotional pain, that emotional harm is equal in intensity to that experienced by the body, and is even more long-lasting and traumatic. Physical pain subsides; emotional pain, when recalled, is relived. Pain has a shared circuitry in the human brain, and it makes no distinction between being hit in the face and losing face (or having a broken heart) as a result of bereavement, betrayal, social exclusion and grave insult. Emotional distress can, in fact, make the body sick. Indeed, research has shown that pain relief medication can work equally well for both physical and emotional injury. We impose speed limits on driving and regulate food and drugs because we know that the costs of not doing so can lead to accidents and harm. Why should speech be exempt from public welfare concerns when its social costs can be even more injurious? In the marketplace of ideas, there is a difference between trying to persuade and trying to injure.** One can object to gays in the military without ruining the one moment a father has to bury his son; neo-Nazis can long for the Third Reich without re-traumatizing Hitler’s victims; one can oppose Affirmative Action without burning a cross on an African-American’s lawn. Of course, everything is a matter of degree. Juries are faced with similar ambiguities when it comes to physical injury. No one knows for certain whether the plaintiff wearing a neck brace can’t actually run the New York Marathon. We tolerate the fake slip and fall, but we feel absolutely helpless in evaluating whether words and gestures intended to harm actually do cause harm. Jurors are as capable of working through these uncertainties in the area of emotional harms as they are in the realm of physical injury.Free speech should not stand in the way of common decency. **No right should be so freely and recklessly exercised that it becomes an impediment to civil society, making it so that others are made to feel less free, their private space and peace invaded, their sensitivities cruelly trampled upon.**

### Sherman

#### Censorship of theaters isn’t a free speech issue, nor protected constitutionally.

**Sherman:** Sherman, Howard [Howard Sherman is senior strategy consultant at the Alliance for Inclusion in the Arts and was executive director of the American Theatre Wing and O’Neill Theatre Center. He is the U.S. correspondent for London’s The Stage.] “Who Cares About Censorship on School Stages?” January 2015. RP

1. **Why is there so much more censorship of high school theatre these days**? There’s no quantitative study that indicates the policing of what’s performed is any greater than it was 10, 25 or 50 years ago. Everything is anecdotal. But the Internet has made it easier for reports to spread beyond individual communities and for news-aggregation sites uncover and accelerate the dissemination of such stories. It only takes one report in a small-town paper these days to bring an incident to national attention; that was a rarity in the print- only era. 2. Isn’t this just a reflection of our polarized national poli- tics? **School theatre censorship doesn’t necessarily follow the red state/blue state binary division, because the impulse can arise from any constituency**. While efforts to quash de- pictions of LGBTQ life—as with Almost, Maine in Maiden, N.C., or Spamalot in South Williamsport, Pa.—may be com- ing from political constituencies galvanized against the spread of marriage equality, or from certain faith communi- ties which share that opposition, that’s hardly the only source. Opposition to Sweeney Todd, both muted (in Or- ange, Conn.) and explicit (in Plaistow, N.H.) was driven by concern about the portrayal of violence in an era of school shootings and rising suicide rates, while Joe Turner’s Come and Gone was challenged by a black superintendent over August Wilson’s use of the “n-word.” 3. What’s the real impact of school theatre on the professional community? The Broadway League pegs attendance at Broadway’s 40 theatres in the neighborhood of 13 million admissions a year and touring shows at 14 million a year. TCG’s Theatre Facts reports resident and touring attendance of 11 million. That totals a profes- sional universe of 38 million admissions. Based on figures provided to me by half a dozen licensing houses, there are at minimum 37,500 shows done in high school theatres annually, and conservatively guesstimating three performances of each in 600 seat theatres at 75-percent capacity, that’s more than 50 million attendees. In both samples, the numbers don’t represent the total activity, but high school theatre’s audience impact is undeniable, both as a revenue stream for authors and as a means of reaching audiences who might not see any other theatre at all. 4. Does it really matter what shows kids get to do in high school? While there are valuable aspects to making theatre that apply no matter what the play choice may be, many schools view their productions as community relations, frequently citing that they want to appeal to audiences “from 8 to 80.” While the vast majority of stu- dents in the shows, and their friends who come to see them, will never become arts profes- sionals, they are the potential next generation of audiences and donors for professional companies. If they are raised on a diet of Alice in Wonderland and The Wizard of Oz (both currently very popular in the high school repertoire), how can we expect more challenging work , new work, or socially conscious work to sustain itself 20 years on? 5. Are school administrators fostering an environment in which censorship flourishes? I’m unwilling to accept the idea that our schools are run by people who fundamentally want to limit what students can learn—or perform. But they are operating within a politi- cal structure topped by an elected board of education, and can be subject to political pres- sure that often makes the path of least resistance—altering text or changing a selected show, in most cases—the expedient way to go. Unless an administrator (or a teacher, for that matter) is independently wealthy, they can’t necessarily afford to risk their job fight- ing for the school play that may have challenging content. That said, students at Newman University rebelled against administration-dictated text changes, reverting to the script as written for the latter two of their four performances of Legally Blonde in November. 6. **Isn’t this a free speech issue? In a word, no. Schools have the right and responsibility to determine what is appropriate activity and speech under their control, and just because students are exposed to all man- ner of content in the media and even in their day-to-day lives doesn’t mean that schools can or must permit it, either in classrooms or performance. That The Crucible is in count- less high school curriculums does not necessarily prevent it from being censored as a per- formance piece, despite the seeming double standard. The same stringent oversight that affects school theatre is also often directed at school newspapers and media.** However, while some school systems attempt to control all student speech, it is a First Amendment violation to infringe on student speech to the media about their dissatisfaction with the actions of a school, including censorship. Drama teachers, who are best equipped to make the cases for the shows they choose, are usually pre- vented from doing so by employment agreements which prohibit them from discussing school matters without the express approval of the administration, typically the superintendent.

#### Off campus theater solves

**Sherman:** Sherman, Howard [Howard Sherman is senior strategy consultant at the Alliance for Inclusion in the Arts and was executive director of the American Theatre Wing and O’Neill Theatre Center. He is the U.S. correspondent for London’s The Stage.] “Who Cares About Censorship on School Stages?” January 2015. RP

**Local theatres—professional, community and academic—make superb allies in fighting against censorship. Institutions and individuals within communities that are respected for their art occupy a position from which to speak out forcefully and effectively for school theatre programs.** **Whether it’s a nearby artistic director or a one-time resident who has gone on to a professional career, they bring a history and authority that will speak to both the local populace and the media. The vocal support of the Yale School of Drama and Yale Rep with the aforementioned Joe Turner, and of Goodspeed Musicals and Hartford Stage in the case of Rent in Trumbull, Conn., were key factors in the ultimately successful efforts toward restoring those shows to production.**

### Volokh – Free Speech Rights

#### State governments regulate free speech

**Volokh:** Volokh, Eugene [Eugene Volokh teaches free speech law, religious freedom law, church-state relations law, a First Amendment Amicus Brief Clinic, and tort law, at UCLA School of Law, where he has also often taught copyright law, criminal law, and a seminar on firearms regulation policy] “Do state and local governments have free speech rights?” The Washington Post. June 2015. RP

Do state and local governments have First Amendment rights against federally imposed speech restrictions? You’d think this would be settled, but it hasn’t been. David Fagundes’s “State Actors as First Amendment Speakers” (2006) is the most recent summary of the issue, and my sense is that there hasn’t been much resolved since then; the most recent explicit word from the Court was this passage, in U.S. v. American Library Association (2003): The Government [argues that] because Government entities [such as state and local libraries] do not have First Amendment rights. See Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94, 139 (1973) (Stewart, J., concurring) (“The First Amendment protects the press from governmental interference; it confers no analogous protection on the government”); id., at 139, n. 7 (“‘The purpose of the First Amendment is to protect private expression'” (quoting T. Emerson, The System of Freedom of Expression 700 (1970))).... We need not decide this question .... The few lower courts that have considered the question are split on it. (Note that local governments and state agencies likely have no First Amendment rights against state governments, because the state is entitled to control the conduct of its subdivisions; likewise, federal agencies have no First Amendment rights against the federal government. **The question is whether state and local governments, agents of one sovereign, have First Amendment rights against the federal government, another sovereign.)** Curiously, the Takings Clause, which expressly protects “private property,” has been read as giving states a right to just compensation when the government takes their property. See U.S. v. 50 Acres of Land (1984). There has been no such holding as to the Free Speech Clause. But, as my brother Sasha pointed out to me, the license plate design case (Walker v. Sons of Confederate Veterans) seems to point in favor of such a right: Our determination that Texas’s specialty license plate designs are government speech does not mean that the designs do not also implicate the free speech rights of private persons. We have acknowledged that drivers who display a State’s selected license plate designs convey the messages communicated through those designs. See Wooley v. Maynard, 430 U.S. 705, 717, n.15, 715 (1977) (observing that a vehicle “is readily associated with its operator” and that drivers displaying license plates “use their private property as a ‘mobile billboard’ for the State’s ideological message”). And we have recognized that the First Amendment stringently limits a State’s authority to compel a private party to express a view with which the private party disagrees. See id., at 715; Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc., 515 U.S. 557, 573 (1995); West Virginia Bd. of Ed. v. Barnette, 319 U.S. 624, 642 (1943). But here, compelled private speech is not at issue. And just as Texas cannot require SCV to convey “the State’s ideological message,” Wooley, supra, at 715, SCV cannot force Texas to include a Confederate battle flag on its specialty license plates. **This last sentence is of course not a square holding on this question of states’ rights to speak — or the right to be free from speech compulsions, which the Court has generally treated analogously to the right to speak. But it does seem to point in favor of such a First Amendment right possessed by state and local governments, with respect to federal regulations; I would certainly cite the passage to lower courts if I was representing a party that wanted to establish such a right. Lawyers, take note.**

### Leef – Lawmakers

#### Proposals to limit speech require change through state legislatures

**Leef:** Leef, George [George Leef is director of research for the John William Pope Center for Higher Education Policy. He holds a bachelor of arts degree from Carroll College (Waukesha, WI) and a juris doctor from Duke University School of Law. He was a vice president of the John Locke Foundation until the Pope Center became independent in 2003.] “Lawmakers Haven't Protected Free Speech On Campus--Here's How They Can.” Forbes. February 2017. RP

-Summarizes major proposal by Kurtz

-Proves likely to be normal means for the Aff since majorly supported

**Much as administrators and faculty may dislike it, the fact is that public colleges are subject to both the First Amendment and the state legislatures that fund them.** Legislators shouldn’t micromanage the campuses, but they must set some basic rules. One of those rules should be that free speech and open inquiry will be protected. You might find it surprising that academics need to be told to protect free speech and inquiry, but American campuses have become increasingly intolerant of speech that conflicts with “progressive” orthodoxy. I have often written about the rules imposed by campus officials that run afoul of the First Amendment, such as the [speech infringement at Iowa State](http://www.forbes.com/sites/georgeleef/2016/11/02/a-public-university-makes-students-choose-between-their-first-amendment-rights-and-graduation/#63dcb3236ff7) and the [miniscule “free speech zone”](http://www.forbes.com/sites/georgeleef/2016/12/15/college-officials-tell-students-you-may-speak-freely-as-long-as-its-within-our-tiny-speech-zone/#30b374256602) at Grand Valley State. Conservative and libertarian speakers have frequently been shouted down or disinvited from giving a scheduled address; students who say something that hurts  someone’s feelings are likely to face charges brought by a “bias incident” team. In [one of the most shameful events of all](http://www.chronicle.com/blogs/innovations/mobbing-for-preferences/30402), a speaker at the University of Wisconsin, Roger Clegg of the Center for Equal Opportunity, was prevented from completing his off-campus talk when a mob of students that had been organized by a school administrator broke into the room where he was discussing the evidence of racial preferences in UW admissions. Hitting the nail squarely on the head, in his January 31 [Wall Street Journal column,](https://www.wsj.com/articles/how-state-lawmakers-can-restore-freedom-on-campus-1485821338) Professor Peter Berkowitz wrote, “The yawning gap between universities’ role as citadels of free inquiry and the ugly reality of campus censorship is often the fault of administrators who share the progressive belief that universities must restrict speech to protect the sensitivities of minorities and women. They often capitulate to the loudest and angriest demonstrators just to get controversies off the front page.” **Precisely. College administrators often find it easier to allow zealous and intolerant activists to have their way. Sometimes they’re complicit. It is time for state legislators to assert themselves and restore the First Amendment and its values on the campuses they are responsible for. A** [**model bill**](https://goldwater-media.s3.amazonaws.com/cms_page_media/2017/2/2/X_Campus%20Free%20Speech%20Paper.pdf) **to accomplish that has recently been drafted by the Goldwater Institute. One of the three drafters is Stanley Kurtz of the Ethics and Public Policy Center. In** [**an article**](http://www.jamesgmartin.center/2017/02/campus-free-speech-act-way-restore-marketplace-ideas/) **published February 1 by the James G. Martin Center for Academic Renewal, Kurtz explained the importance of free speech.** He wrote, “Freedom is not a license to attack your foes. License of that sort is the opposite of freedom. If you want to understand freedom, consider what Justice Oliver Wendell Holmes of the Supreme Court famously said in 1929: ‘If there is any principle of the Constitution that more imperatively calls out for attachment than any other it is the principle of free thought – not free thought for those who agree with us but freedom for the thought that we hate.’” Kurtz continued, “If true freedom of speech is ‘freedom for the thought that we hate,’ then freedom is actually a form of self-mastery. Far from being license, true freedom is actually an act of self-control, a refusal to physically extinguish even the speech we abhor.” He’s right, but a lesson that too few college students ever learn is that as civilized people, they need to exert self-mastery and tolerate speech they disagree with. **The bill would restore free speech on campus through several means. First and foremost, schools would have to eliminate speech codes, speech zones, and other policies that unreasonably restrict speech. They would also have to discipline students who break the free speech rules. Another provision is that state colleges and universities would have to include in their orientations a discussion of the importance of free speech and tolerance for dissenting views**. While it doesn’t specify this, schools should consider assigning John Stuart Mill’s On Liberty in addition to or perhaps instead of the “summer book” they often assign to incoming students. That would be far more instructive than the usual soppy, politically-themed books they usually choose – see [this report by the National Association of Scholars](https://www.nas.org/images/documents/NAS-BeachBooks2014-16_Full_Report.pdf) in that regard. **And capping everything off, the bill requires the creation of a Committee on Free Expression within the board of trustees of each state college and university. These committees would be charged with issuing a yearly report on the status of free expression on campus, a report that would go to the governor, the state legislature, and be available to the public.** This obligation would, Kurtz argues, create a counterforce to the pressure that anti-free speech agitators put on school officials. Summing up his case for the bill, Kurtz writes, “By strongly affirming the core principles of free expression, creating a discipline policy for those who interfere with the freedom of others, informing students of the principles of free speech and the penalty for disregarding it, and then holding administrators publicly accountable for failure to enforce the provisions of the bill, the model bill is designed to create a virtuous cycle that will prevent speaker shout-downs and disinvitations from ever happening in the first place.” When the model bill is introduced in state legislatures, as it surely will be, the results will be interesting. In “deep blue” states, it will probably never get a hearing. In other states, lobbyists for the state university systems are apt to argue that the bill is unnecessary because they already have a proper commitment to free speech and don’t need any outside interference. The problem with that argument is that at many schools the commitment to free speech is merely skin-deep. Outside “interference” is exactly what is needed. The model bill should be introduced, debated, and perhaps improved upon. The legislative process by itself will shine light on the poor state of free speech on our campuses and where the bill is enacted it will shore up one of the most important foundations of our democracy.

### Leef

#### Plan does nothing – it can’t change the culture on campuses that condemns free speech and prizes other values more

**Leef:** Leef, George [George Leef is director of research for the John William Pope Center for Higher Education Policy. He holds a bachelor of arts degree from Carroll College (Waukesha, WI) and a juris doctor from Duke University School of Law. He was a vice president of the John Locke Foundation until the Pope Center became independent in 2003.] “Will the Surge of Support for Free Speech on Campus Do Any Good?” November 2016. RP

-Circumvention – won’t obey speech policies

-Uniqueness arg – can’t change the culture

Will it do much good, though? **The reason to doubt that it will is the well-entrenched idea among many college leaders that while free speech is good, they have to “balance” it with other considerations. Yale University provides an object lesson. Last fall, the campus erupted when one faculty member, Erika Christakis, wrote a harmless email that mildly dissented from the idea that students must take abundant care not to choose a Halloween costume that might be thought offensive by anyone. Merely writing that email led to a vitriolic protest by students and when her husband, Nicholas Christakis, dared to address the crowd and try to restore calm, things degenerated into a screaming tirade against him. (You can read about the event here.) How did Yale’s president Peter Salovey respond? Rather than defending free speech and civility, he chose to succor the protesting students, meekly saying, “I failed you.” Subsequently, vengeful students hounded the Christakises to the point where they decided to resign and leave Yale**. In a recent op-ed, Salovey wrote that Yale values “free expression as well as inclusivity.” But as a famous Yale Law School graduate Professor Richard Epstein notes in this piece, Salovey did nothing to defend the Christakises and that as between free expression and inclusivity, “the massive level of abuse directed at Nicholas and Erika Christakis reveals how strongly Yale weighs one imperative over the other.” **Epstein is right that free speech takes a back seat in Yale’s priorities. The same is true at many other colleges and universities. Officials pay lip service to free speech but when they have to choose between upholding it and placating student radicals who don’t believe in it, they behave the way Salovey did. When college leaders try to juggle free speech along with “diversity” and “inclusion” the usual result is that free speech gets dropped.** As Epstein observes, “protected groups get to complain loudly about microaggressions against them, but they, in turn, are entitled to venomously attack those with whom they disagree.” Officials at many schools besides Yale take that “free speech is important, but” approach. Consider Iowa State, where the school is so angst ridden over the possibility that some student might be offended by what another says that it has a severely restrictive speech and “harassment” policy. Then it tells students who are reluctant to pledge to abide by it that they risk not being allowed to graduate if they don’t. **Elegant defenses of freedom of speech aren’t worth the paper they’re printed on unless college officials stop giving aid and comfort to those who demand that speech be controlled to satisfy them.**

### Epps

#### Free speech isn’t without harm – universal recognition of it leads to minority causalities and genocide

**Epps:** Epps, Garrett [Contributor, The Atlantic] “Free Speech Isn't Free.” *The Atlantic.* February 2014. RP

-Standpoint of white privilege to assume universally good

-Nazis relied on free speech

-Marketplace of ideas not perfect – sometimes allows bad speech

-Minorities are victims – they experience psychological damage

**Most journalistic defenses of free speech take the form of "shut up and speak freely."** The Beast itself provides Exhibit A: Cultural news editor Michael Moynihan announced that "we're one of the few countries in the Western world that takes freedom of speech seriously," and indignantly defended it against "those who pretend to be worried about trampling innocents in a crowded theater but are more interested in trampling your right to say whatever you damn well please." To Moynihan, Rosenbaum could not possibly be sincere or principled; he is just a would-be tyrant. The arguments about harm were "thin gruel"—not even worth answering. Moynihan's response isn't really an argument; it's a defense of privilege, like a Big Tobacco paean to the right to smoke in public. In contrast to this standard-issue tantrum is a genuinely thoughtful and appropriate response from Jonathan Rauch at The Volokh Conspiracy, now a part of the Washington Post's web empire. Rauch responds that painful though hate speech may be for individual members of minorities or other targeted groups, its toleration is to their great collective benefit, because in a climate of free intellectual exchange hateful and bigoted ideas are refuted and discredited, not merely suppressed .... That is how we gay folks achieved the stunning gains we've made in America: by arguing toward truth. I think he's right. But the argument isn't complete without conceding something most speech advocates don't like to admit: **Free speech does do harm. It does a lot of harm. And while it may produce social good much of the time, there's no guarantee—no "invisible hand" of the intellectual market—that ensures that on balance it does more good than harm.** As Rauch says, it has produced a good result in the case of the gay-rights movement. But sometimes it doesn't. **Europeans remember a time when free speech didn't produce a happy ending.** They don't live in a North Korea-style dystopia. They do "take free speech seriously," and in fact many of them think their system of free speech is freer than ours. **Their view of human rights was forged immediately after World War II, and one lesson they took from it was that democratic institutions can be destroyed from within by forces like the** Nazis who use mass communication to dehumanize whole races **and religions, preparing the population to accept exclusion and even extermination.** For that reason, some major human-rights instruments state that "incitement" to racial hatred, and "propaganda for war," not only may but must be forbidden. The same treaties strongly protect freedom of expression and opinion, but they set a boundary at what we call "hate speech." It's a mistake to think that the U.S. system goes back to the foundation of the republic. At the end of World War II, in fact, our law was about the same as Europe's is today. The Supreme Court in Beauharnais v. Illinois (1952) upheld a state "group libel" law that made it a crime to publish anything that "exposes the citizens of any race, color, creed or religion to contempt, derision, or obloquy." European countries outlawed fascist and neo-Nazi parties; in the 1951 case Dennis v. United States, the Supreme Court upheld a federal statute that in essence outlawed the Communist Party as a "conspiracy" to advocate overthrowing the U.S. government. Justice Robert H. Jackson, who had been the chief U.S. prosecutor of Nazi war criminals, concurred in Dennis, warning that totalitarianism had produced "the intervention between the state and the citizen of permanently organized, well financed, semi- secret and highly disciplined political organizations." A totalitarian party "denies to its own members at the same time the freedom to dissent, to debate, to deviate from the party line, and enforces its authoritarian rule by crude purges, if nothing more violent." Beauharnais, Dennis, and similar cases were criticized at the time, and today they seem grievously wrong. But many thoughtful people supported those results at the time. U.S. law only began to protect hateful speech in the 1960s. The reason: Repressive Southern states were trying to criminalize the civil-rights movement. U.S. law only began to protect hateful speech during the 1960s. The reason, in retrospect, is clear—repressive Southern state governments were trying to criminalize the civil-rights movement for its advocacy of change. White Southerners claimed (and many really believed) that the teachings of figures like Martin Luther King or Malcolm X were "hate speech" and would produce "race war." By the end of the decade, the Court had held that governments couldn't outlaw speech advocating law violation or even violent revolution. Neither Black Panthers nor the KKK nor Nazi groups could be marked off as beyond the pale purely on the basis of their message. Those decisions paved the way for triumphs by civil rights, feminist, and gay-rights groups. **But let's not pretend that nobody got hurt along the way. The price for our freedom—a price in genuine pain and intimidation—was paid by Holocaust survivors in Skokie and by civil-rights and women's-rights advocates subjected to vile abuse in public and private, and by gay men and lesbians who endured decades of deafening homophobic propaganda before the tide of public opinion turned. Free speech can't be reaffirmed by drowning out its critics**. It has to be defended as, in the words of Justice Oliver Wendell Holmes, "an experiment, as all life is an experiment." I admire people on both sides who admit that we can't be sure we've drawn the line properly. In Dennis, the case about Communists, Justice Felix Frankfurter voted to uphold the convictions. That vote is a disgrace; but it is slightly mitigated by this sentence in his concurrence: "Suppressing advocates of overthrow inevitably will also silence critics who do not advocate overthrow but fear that their criticism may be so construed .... It is a sobering fact that, in sustaining the convictions before us, we can hardly escape restriction on the interchange of ideas." When Holmes at last decided that subversive speech should be protected, he did so knowing full well that his rule, if adopted, might begin the death agony of democracy. "If in the long run the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community," he wrote in his dissent in Gitlow v. New York, "the only meaning of free speech is that they should be given their chance and have their way." The reason that we allow speech cannot be that it is harmless. It must be that we prefer that people harm each other, and society, through speech than through bullets and bombs. American society is huge, brawling, and deeply divided against itself. Social conflict and change are bruising, ugly things, and in democracies they are carried on with words. That doesn't mean there aren't casualties, and it doesn't mean the right side will always win. For that reason, questions about the current state of the law shouldn't be met with trolling and condescension. If free speech cannot defend itself in free debate, then it isn't really free speech at all; it's just a fancier version of the right to smoke.

### Bidisha

#### The history of art is one rooted in racism – people have written discriminatory things and portrayed Blacks stereotypically with no repercussions.

**Bidisha:** Bidisha SK Mamata [Goes by Bidisha professionally; contributor, The Guardian] “It’s time for the arts world to look hard at its own racism.” The Guardian. December 2015. RP

**The cultural world is undergoing a slow and long overdue reckoning with racism. The Rijksmuseum in Amsterdam has rightly changed the archaic, Orientalist, exoticising, offensive or unthinkingly racist titles of more than 100 artworks including the use of the word “negro” for Afro-Caribbean subjects and “Mohammedan” for Middle Eastern subjects.** In the US, a Harvard University emblem featuring the insignia of a slave-owning family is the subject of a student protest. **Meanwhile, in the UK, Oriel college, Oxford, is under pressure** [**to remove a statue paying tribute to coloniser Cecil Rhodes**](https://www.theguardian.com/education/2015/dec/18/oxford-university-students-cecli-rhodes)**, following a student-led protest inspired by similar demonstrations in Cape Town, South Africa**. Even though they haven’t yet decided what action to take, Oriel has been admirably direct in naming the problem and saying it “does not condone [Rhodes’] racist views or actions”. In that case, why keep a statue aggrandising and lionising the man who held those views? To keep the statue is indeed to condone those actions; the prestigious Rhodes scholarship in his name can easily be renamed and, indeed, I wonder why it’s taking so long. More ambiguously, a Quaker school in suburban Philadelphia has taken [Mark Twain’s Huckleberry Finn](https://www.theguardian.com/books/2015/dec/14/school-stops-teaching-huckleberry-finn-community-costs-n-word) – about a young white boy fleeing his abusive father with Jim, an escaped black American slave – off the syllabus because of its heavy dosage of the N-word, which made students feel uncomfortable. I’m wondering if the students were mainly white and their discomfiture was from having to confront the history (and present) of white racism as embodied in that word, or if it goes deeper than that and the racist stereotyping of Jim as emotionally naive, sentimental and simple was what stuck in their throat, as it does in mine. At times like this, cultural critics who happen to be of colour are approached for our take, as though because of the high melanin levels in our skin we are imbued with some kind of race wisdom that automatically knows the solution to every nuance of white people’s racism or to the long and complex warping effects of history on culture, language and representation. It involves coming face to face with the outright racism, rank arrogance and exploitation of Britain’s colonialism, and the profits that flowed from it and bled into this country’s “great” houses, elite universities and institutions. Of course, there’s a difference between a reflexive text that quotes racist epithets to demonstrate racism, and one in which those epithets are used liberally, casually and without any self-reflexiveness and awareness, because its creator was a racist, the society they were born into and creating for was racist and nobody minded. I think Mark Twain’s unthinking racial stereotyping, whether or not he meant well, should be acknowledged and discussed in schools, not banned from the table outright. What I also know is that racist epithets have the power to wound because racism is alive and well, armed and dangerous and perpetrated by many, from police officers to people on the street to “nice guys” in power in the seemingly progressive worlds of the arts and media, education, politics, economics and law. **When readers and gallery visitors, students and citizens notice something – the wording in a book or title that we don’t want to utter because it is a long-standing and still used insult against us and it feeds into hateful or ignorant stereotypes about us – institutions should take note, instead of dismissing and ridiculing us**. Nicholas Serota, of the Tate, has said that he won’t bother following the Rijksmuseum in addressing racist artwork titles. **Well, in an art world elite comprised of gallery directors, critics, curators and star artists that is shocking for its domination by white men, I guess that’s his privilege.** Though he has also said they “may put an explanatory note beside the work saying it had been named in a different period”. Talking about language, titles, plaques and statues to confront the ignorance and prejudices of the past is only the tip of a very toxic iceberg. **We have less social mobility than ever before and every single elite profession, from the arts and culture to the media, finance, law and medicine, is dominated by white men. There is a heavy and painful sexual and racial glass ceiling and the white men’s club mentality is stronger than it ever was – as always in times of economic instability, when cronies with established power close ranks**. [Lenny Henry](https://www.theguardian.com/tv-and-radio/tvandradioblog/2015/nov/18/lenny-henry-reiterates-his-call-for-a-sea-change-on-diversity) has spent much of the past two years campaigning bravely, and at risk to his own career, about the lack of racial and sexual diversity in the UK arts, media and culture, pointing up the wealth of creative talent leaving the UK, from actor [Archie Panjabi](https://www.theguardian.com/tv-and-radio/2014/jan/20/archie-panjabi-kalinda-the-good-wife-interview), playwright [Kwame Kwei-Armah](https://www.theguardian.com/stage/2014/feb/02/kwame-kwei-armah-center-stage) and [Marianne Jean-Baptiste](https://www.theguardian.com/stage/2015/jun/15/marianne-jean-baptiste-secrets-and-lies-british-movies) to [Idris Elba](https://www.theguardian.com/culture/idris-elba) and [David Oyelowo](https://www.theguardian.com/film/david-oyelowo). Most recently, there was, rightly, uproar at [World Book Night](https://www.theguardian.com/books/2015/nov/25/world-book-night-criticised-all-white-2016-giveaway-list) coming up with a long list of contemporary books to give away, 100% of them by white authors. It’s time for the arts world to look hard at its own misogyny and racism, starting with language and then going much deeper. More importantly, it’s time for them to start hearing and believing survivors instead of dismissing them. All we’re asking is not to be called niggers or negroes or be misrepresented or have our enslavement recast as gentle servitude or to have our educational institutions decorated with plaques worshipping white racists. We’re angry about a few very entrenched things, like racism, as expressed in language, behaviour and representation. When activists “make a fuss” about these issues, whether through thinkpieces or riots or political demonstrations, those in power should listen. The fact that there is resistance even to minor demands for evolution shows how entrenched racism is and how comfortable those in power are with it. It is not for white people to decide what is or is not racist and it is not for them to decide what we people of colour are called. **I think statues, plaques and awards paying tribute to racist men should be removed, and in their place should be a little notice naming and shaming them, and naming their prejudice. I think original racist titles can be altered and an introductory essay, as so many “classic” works have, putting that original title and content in context, can be included. None of this is difficult to do or hard to swallow. If the kickback against racism causes a headache for perpetrators, enables, colluders, cronies and those too complacent and privileged to want to deal with it or think about what it’s like to put up with racism, stereotyping and assumptions all day every day, well, tough.**

### Coca

#### Students often produce racist and stigmatizing art, such as “Whites Only” signs over bathrooms

**Coca:** Coca, Onan [Contributor, Freedom Outpost] “Student's "Racist" Art Project Sparks Outrage at a New York University!” *Freedom Outpost.* September 2015. RP

**A student at the University of Buffalo ignited controversy Wednesday for hanging "White Only" and "Black Only" signs on bathrooms and drinking fountains in Clemens Hall that houses offices and classrooms for the College of Arts and Sciences. The signs, which campus police removed after receiving complaints, were posted as an assignment for an art class.** Campus officials initially [treated](http://www.ubspectrum.com/article/2015/09/white-only-signs-ub-clemens) the incident as an "insensitive prank." Ashley Powell, a graduate student in fine arts, came forward as the individual behind the project at a meeting of the Black Student Union on September 16. Powell, who is black, hung the signs as a project for her "Installation: Urban Spaces" class, which requires the creation of an art installation in a public space. **Powell**[**explained**](http://www.ubspectrum.com/article/2015/09/ub-student-admits-to-hanging-white-only-and-black-only-signs-for-art-project?_h=41bdbffc-44b4-4178-884a-d0864fe407b2)**that her purpose was to "get a reaction out of people. UB students reacted immediately and took to social media to express confusion and outrage. One student**[**tweeted**](https://twitter.com/JVMES_BVTTLE/status/644210083296071680)**, "Not only is this a hate crime, but it is also an act of terrorism."** The tweet received almost 500 favorites and more than 700 retweets. Over 100 students appeared at the Black Student Union's weekly meeting later in the day, where Powell admitted to posting the signs. The UB Spectrum [reports](http://www.ubspectrum.com/article/2015/09/ub-student-admits-to-hanging-white-only-and-black-only-signs-for-art-project?_h=41bdbffc-44b4-4178-884a-d0864fe407b2) that some of the participants left the meeting crying. Micah Oliver, president of the Black Student Union, [said](http://abc27.com/2015/09/17/white-only-signs-stir-up-controversy-at-university-of-buffalo/) the signs evoked, "a past our generation has never seen which I think is why it was so shocking for us to see." **One student**[**called**](https://twitter.com/N00dl3z4lyf3/status/644329923679752193)**the signs "sickening" and that the project "entices a fear no one should ever experience." Powell apologized for hurting people but defended the project as a work of art**. Powell did not clear the project with the university before posting the signs. Posting on campus is limited to designated bulletin boards, and university policy [states](http://www.student-affairs.buffalo.edu/judicial/15rulesp.pdf) that "exceptional situations and/or unique material" require special permission from the Office of Student Affairs. The university [said](http://www.buffalo.edu/news/releases/2015/09/035.html) in a press release that it is "continuing to review this matter through appropriate university policies and procedures." The Intercultural and Diversity Center will call a meeting Sept. 17 to "allow students to continue the discussion."

### Lindsay

#### The Aff leads to Congressional regulation of free speech – if colleges try to allow free speech but fail, Congress will step in.

**Lindsay:** Lindsay, Thomas K. [Contributor, Real Clear Policy] “Congress vs. Campus Speech Restrictions.” Real Clear Policy. August 2015. RP

Of late, there has been a deluge of news accounts detailing gross violations of free speech and debate on American campuses. **From campus speech codes, to commencement speaker "dis-invitations," to naked ideological indoctrination in the classrooms, our universities, whose defining mission is the unfettered, nonpartisan quest for truth, are instead becoming havens for conformism, empty shells of the Socratic ideal from which they originally sprang. But this oppressive regime may be beginning to crumble, at least if some members of the U.S. Congress have their way. In June, the House Judiciary Committee's Subcommittee on the Constitution and Civil Justice held a hearing titled, "First Amendment Protections on Public College and University Campuses," which investigated the extent to which free speech is still protected on taxpayer-funded campuses. The findings from the investigation were not heartening, to put it mildly. As a result, Rep. Bob Goodlatte (R., Va.), chair of the House Judiciary Committee, recently sent a pointed letter to 162 public colleges and universities whose policies fail to ensure the First Amendment rights of their professors and students.** The House committee's list of freedom-suppressing public schools comes from research conducted by the nonprofit Foundation for Individual Rights in Education (FIRE), whose announced mission is to protect intellectual liberty on America's campuses. Surveying FIRE's list of offenders, we find a number of public flagships, among them the University of Alabama, the University of Georgia, the University of Iowa, the University of Kansas, the University of Michigan-Ann Arbor, and Ohio State University. In my home state of Texas, taxpayers fund ten named offenders, among them the state's two flagship institutions, the University of Texas-Austin and Texas A&M University-College Station. It is illegal for any public college or university to maintain and enforce speech codes that violate the First Amendment-guaranteed rights of faculty and students. **At the June Subcommittee on the Constitution and Civil Justice hearing, Greg Lukianoff, FIRE's president, testified that "speech codes — policies prohibiting student and faculty speech that would, outside the bounds of campus, be protected by the First Amendment — have repeatedly been struck down by federal and state courts. Yet they persist, even in the very jurisdictions where they have been ruled unconstitutional**. The majority of American colleges and universities maintain speech codes." ruled unconstitutional. The majority of American colleges and universities maintain speech codes." Of the schools nationwide in violation of the First Amendment, the 162 recipients of the House committee's letter were found to be the worst offenders. Chairman Goodlatte writes, "In FIRE's Spotlight on Speech Codes 2015, your institution received a ‘red light' rating. According to FIRE, a ‘red light' institution ‘is one that has at least one policy that both clearly and substantially restricts freedom of speech.'" Hence, Goodlatte writes "to ask what steps your institution plans to take to promote free and open expression on its campus(es), including any steps toward bringing your speech policies in accordance with the First Amendment." The named offenders have until August 28 to reply to Chairman Goodlatte's inquiry. How they choose to respond will determine the committee's course of action. **With this strong move by the House committee, we witness the academic world turned upside down: Academic freedom has always been supported, and rightly, as a defense against anti-intellectual pressure brought on universities by the political branches. The deeper defense of academic freedom is its indispensability to the nonpartisan truth-seeking that defines higher education's mission. But what happens when those who would deprive students and faculty of their First Amendment freedoms are within the universities themselves? This, unfortunately, is the crisis in which many universities find themselves today. For the solution, Congress has taken it upon itself to educate the educators in what those who supervise our universities should already know, namely, that when intellectual oppression rises, scientific progress and democratic deliberation decline.** Given the stakes involved, it is encouraging to see that there is growing bipartisan support for restoring freedom on our campuses. **While Representative Goodlatte is a Republican, in the past year, two Democratic governors — Terry McAuliffe of Virginia and Jay Nixon of Missouri — have signed legislation banning "free-speech zones" at all public universities in their states**. As I have argued previously, in America, under the First Amendment to the Constitution, everywhere should be a free-speech zone, not simply the restricted (and restrictive) spaces that the majority of universities today unconstitutionally deign to provide for students. **Although legislative action might prove necessary in the event that universities decline the House committee's plea to follow the Constitution, it would be heartbreaking if these institutions had to be compelled by a political branch to jettison their political agendas and return to disinterested inquiry**. It would mean that American higher education has so lost any sense of its defining — and ennobling — purpose that it now has to be guided by those outside it, rather than guiding them, as it ought. As a former university professor, I have seen firsthand the effect that the intolerance on our campuses has on the minds and souls of our students. As is the case in political regimes that suppress free speech, university policies that stifle debate produce an atmosphere of anxiety, distrust, and ultimately cynicism among those who suffer it. "Students' education suffers when colleges and universities infringe on free speech," observed Azhar Majeed, director of FIRE's Individual Rights Education Program. Rightly said. Fear, intimidation, and uniformity are usurping the free, robust inquiry and debate that is the lifeblood of a genuine institution of higher learning, undermining both academic truth-seeking and democracy, which depends on an informed citizenry. The effect of campus-promoted intolerance is to jettison an informed, independent-minded citizenry and to replace it with a cowed, guilty, uncritical herd. From the students suffering under this regime will in time come our nation's leaders. Will they be able to face without blinking the profound moral challenges that every generation must face? If so, it won't be due to their education. It will be in spite of it.

### Chatterjee and Maira

#### The Aff makes things worse – protests and movements against the university just get coopted – more radical demands like divestment are needed instead

**Chatterjee et al:** Chatterjee, Piya [Dorothy Cruickshank Backstrand Chair of Gender and Women’s Studies Chair of the Feminist, Gender, and Sexuality Studies Department, Scripps College] and Sunaina Maira [Professor of Asian American Studies, UC Davis]. *The Imperial University: Academic Repression and Scholarly Dissent*. University of Minnesota Press, 2014. RP

**But the question remains, is scholarly dissent simply the other face of the coin of academic repression—that is, are expressions of protest doomed to be incorporated into the imperial cartographies they resist or it possible for them to create alternative mappings that resist recuperation?** The chapters in this book allude to this enduring dilemma about resistance from within, directly and indirectly; some authors suggest that what is needed is a new paradigm that reframes the architecture of repression. For example, across distinctly different sites of (neo)colonialism and global capitalism, **Oparah argues for an unmasking of a transnational carceral logic of “new” empire that traces between the imperial core and its peripheries. She argues that it is not more, “countercarceral” knowledge that scholars resisting the “militarization and prisonization of academia” must produce in order to realize a postcarceral academy. Rather, academics must use their privilege to chal- lenge the complicity of the academy with, and call for divestment from, prison and military industries. As Oparah and also Prashad eloquently suggest, the university must be reimagined as a site of solidarity with those engaged in struggles against neoliberal capitalism and organizing for the abolition of the academic-MPIC.**

#### Demands for academic freedom can’t solve the firing of professors – the university will just make different excuses

**Chatterjee et al:** Chatterjee, Piya [Dorothy Cruickshank Backstrand Chair of Gender and Women’s Studies Chair of the Feminist, Gender, and Sexuality Studies Department, Scripps College] and Sunaina Maira [Professor of Asian American Studies, UC Davis]. *The Imperial University: Academic Repression and Scholarly Dissent*. University of Minnesota Press, 2014. RP

**The AAUP’s Seligman Report of 1915 reveals that the notion of academic freedom was, in fact, “deeply enmeshed” with the “overall status, security, and prestige of the academic profession**.”50 **Setting up procedural safeguards was important, but its language regarding “appropriate scholarly behavior” and cautiousness about responding to controversial matters in the academy (by ensuring that all sides of the case were presented) suggested the limits of dissent. Academic freedom, then, is a notion that is deeply bound up with academic containment—a paradox suggested in our earlier discussion of protest and inclusion/incorporation in the academy and one that has become increasingly institutionalized since the formation of the AAUP. The academic repression of the McCarthy era received its impetus from President Truman’s March 22, 1947, executive order that “established a new loyalty secrecy program for federal employees**.” However, the roots of insti- tutional capitulation—by both administrators and faculty—when the state targeted academics who were communists or viewed as “sympathizers” are much deeper. **It is also signi cant that the notion of “appropriate behavior” for faculty rested on a majoritarian academic “consensus” about “civil” and “collegial” comportment. For example, Ellen Schechter notes cases prior to the Cold War where scholars were red not necessarily for their political a liations per se but due to “their outspoken-ness.**”51 is repression from within—not just beyond—the academy reveals the cultures of academic con- tainment where, as Pulido, Gumbs, and Rojas remind us, certain kinds of “unruliness” must be managed or excised.

#### Academic freedom is a trap to recreate dominant ideals, prevent democracy, and shield effective critique.

**Chatterjee et al:** Chatterjee, Piya [Dorothy Cruickshank Backstrand Chair of Gender and Women’s Studies Chair of the Feminist, Gender, and Sexuality Studies Department, Scripps College] and Sunaina Maira [Professor of Asian American Studies, UC Davis]. *The Imperial University: Academic Repression and Scholarly Dissent*. University of Minnesota Press, 2014. RP

The answers lie, to a large extent, in the definition and utilization of aca- demic freedom as a liberal principle and in the paradoxes that this liberal politics generates in the academy and beyond. **Prashad argues that the liberal precept of academic freedom draws on John Stuart Mills’s conception of the necessity of “contrary opinions” for providing checks and balances for social norms but not for enabling a “transformative political agenda.”** A Eurocentric genealogy of academic freedom would trace it to notions of critical pedagogy in German universities in the eighteenth and nineteenth centuries, intertwined with notions of economic and political liberalism embedded in Enlightenment modernity. Cary Nelson, the renowned president of the American Association for University Professors (AAUP), who for many U.S. academics represents the face of institutionalized academic freedom, writes, “Academic freedom thus embodies Enlightenment commitments to the pursuit of knowledge and their adaption to di erent political and social realities.”78 AAUP issued the Declaration of Principles on Academic Freedom and Academic Ten- ure in 1915,79 and for some scholars, such as Robert Post, this declaration is the “greatest articulation of the logic and structure of academic freedom.”80 According to Post, this is because it conceptualizes academic freedom as based on “compliance with professional norms” speci c to academic labor and on the safeguarding of scholarly expertise that produces “professional self-regulation” and “professional autonomy” for faculty.81 Yet even Post acknowledges that there is a paradox inherent in this conceptualization based on academic labor, for these professional norms are not so easily de ned and so academic freedom is “simultaneously limited by, and independent of, pro- fessional norms.”82 A critic of the AAUP’s unwillingness to protect scholars targeted by McCarthyism suggests the AAUP upholds procedural freedom without an understanding of the importance of expanding its understanding of political freedom: “**Stripped of its rhetoric, academic freedom thus turns out to be an essentially corporate protection. And as we trace its develop- ment during the Cold War, we should not be surprised to nd that it was involved more o en to defend the well-being of an institution rather than the political rights of an individual.**”83 Other scholars, such as Judith Butler, also point out that the AAUP’s formulation of academic freedom intended to “institutionalize a set of employer-employee relationships in an academic setting,” not to guarantee academic freedom as an individual right.84 While she agrees with Post that academic freedom should not be rooted in “individual freedom” or simply in First Amendment rights of freedom of expression, she goes further to point to the collusion between the university and the state in de ning pro- fessional norms and professional freedom in scholarship and to emphasize that expectations of what is permissible for academics are always historically evolving and o en politically motivated. So these professional constraints are contingent and contested, not xed; Butler argues, “As faculty members, we are constrained to be free, and in the exercise of our freedom, we con- tinue to operate within the constraints that made our freedom possible in the rst place.”85 We take these critiques of an individually based, constrained, and “weak” notion of academic freedom further, arguing that academic freedom is per- haps not tenable as a basis for a just struggle for “freedom,” if that struggle needs to be de ned by a rmative principles rooted in progressive or le conceptions of freedom, justice, and equality, as suggested by Prashad. In other words, academic freedom is not, and should not be, the holy grail of dissent. **Academic freedom is generally understood—and operationalized in the U.S. academy today—as an ideologically neutral principle of freedom of expression and First Amendment rights. It is thus a libertarian, not just liberal, notion of individual freedom, and it is framed as a core principle of Western modernity and democracy, serving both the liberal-le and the conservative-right. In this model, neo-Nazis or antiabortion advocates have the same rights to academic freedom in the university as do queer activists or antiwar proponents. There is no progressive ethos built into the principle of academic freedom, and this is what makes it easily available for recupera- tion and resort by the right as much as the le . Prashad makes the important observation that even the academic left o en tends to take refuge in the “safe harbor” of academic freedom rather than engaging in a struggle for “genuine campus democracy” and labor rights for workers on campuses and for the right to education as a public good and for a “culture of solidarity,” as evoked by Dominguez. Perhaps one of the most ironic examples of what could be described as the use of academic freedom as a smoke screen for larger struggles over other kinds of freedoms was the cancellation of the AAUP’s own conference on academic boycotts, slated to be held in 2006 at the Rockefeller Confer- ence Center in Bellagio, Italy.** e conference featured a diverse group of scholars with a range of views on the strategy of academic boycott—some in favor, some opposed—within the context of the emerging, global debate about the Palestinian call for an academic boycott of Israeli academic institu- tions, inspired by the boycott of South African institutions in the apartheid era. However, under mounting pressure from Israeli and pro-Israel academ- ics, the meeting was cancelled. e AAUP, instead, published online many of the papers intended for presentation at the conference, but it also issued a report strongly condemn- ing the academic boycott. Joan Scott and Harold Linder, who had helped organize the conference and later edited the online publication, expressed dismay that the conference was canceled, but they also concluded that the AAUP’s “principled opposition to academic boycott” was an expression of its commitment to academic freedom.86 While Joan Scott later revised her position in an eloquent essay,87 this seemingly contradictory position is an argument that is o en used in opposition to the academic boycott, in the case of Israel, and it expresses a deeper paradox that illuminates the fault line at the core of academic freedom—as does the entire saga of the failed con- ference. Is it possible that closing o the possibility of a boycott of academic institutions—in the context of their complicity with military occupation and apartheid policies—is an expression of academic freedom, or is it a denial of that academic freedom? And whose academic freedom is being upheld? Lisa Taraki, a sociologist at Birzeit University in the West Bank who was scheduled to present at Bellagio, noted in her paper, “I think that the abstract ideas of academic freedom and the free exchange of ideas cannot be the only norms in uencing the political engagement of academics. O en, when oppression characterizes all social and political relations and structures, as in the case of apartheid South Africa or indeed Palestine, there are equally important and sometimes more important freedoms that must be fought for, even—or I would say especially—by academics and intellectuals.”88 **Omar Barghouti, a Palestinian intellectual who is, like Tarakai, a cofounder of the Palestinian Academic and Cultural Boycott of Israel (PACBI), argued that the AAUP was “privileging academic freedom as above all other freedoms.” Citing Judith Butler, he argued that this position excluded the freedom of “academics in contexts of colonialism, military occupation, and other forms of national oppression where ‘material and institutional foreclosures . . . make it impossible for certain historical subjects to lay claim to the discourse of rights itself ’. . . . Academic freedom, from this angle, becomes the exclu- sive privilege of some academics but not others.**”89 Barghouti and Taraki make two crucial points: First, they state that academic freedom cannot trump other rights to freedom (and other freedoms)—the right to freedom of mobility for students and scholars to attend college, to travel to conferences, and to do research; the collective right to self-determination; the freedom from occupation and racial segrega- tion; and, in essence, the freedom to live in peace, dignity, and equality. As suggested by our introductory vignettes, the freedom and right to education of students living in zones of occupation and war overseas must be linked to the freedom of students and scholars working—and protesting—within the imperial university. Proponents of the academic boycott of Israeli institu- tions argued that the campaign is, thus, in support of and produces academic freedom, and also supports human rights for all—as it was in the boycott of South African institutions. Second, they allude to the selectivity of the prin- ciple of academic freedom—why South Africa and not Palestine?—and the ways in which the U.S. academy (like the Israeli academy) and professional associations such as the AAUP are rmly embedded in a political context while pretending to be outside or above it.90 is adjudication of neutrality and self-professed impartiality is, in fact, a political stance, as argued by Salaita and illustrated by De Genova’s re ections on the limits of academic solidarity with radical critiques of U.S. imperialism. e holy grail of academic freedom shores up the political com- mitments and investments—not to mention the intellectual freedoms—of powerful academics and constituencies and fails to protect the commitments and interventions of the heretics who are less powerful or far outside the sta- tus quo. is is powerfully illustrated by the intense political campaign tar- geting De Genova for his “blasphemous” criticism of U.S. military violence and Dominguez’s farcical play about his experience of being investigated by the FBI and UC San Diego due to the Electronic Disturbance eater’s “vir- tual sit-in” protesting the UC fee hikes and the Transborder Immigrant Tool project.91 We must ask, why is it that some cases of academic “blasphemy” provoke an outpouring of sympathy and support from colleagues while other cases are considered too heretical to warrant (ready) solidarity?

#### Academic freedom gets coopted by the military industrial complex and obscures the problem.

**Chatterjee et al:** Chatterjee, Piya [Dorothy Cruickshank Backstrand Chair of Gender and Women’s Studies Chair of the Feminist, Gender, and Sexuality Studies Department, Scripps College] and Sunaina Maira [Professor of Asian American Studies, UC Davis]. *The Imperial University: Academic Repression and Scholarly Dissent*. University of Minnesota Press, 2014. RP

**Steven Best, Anthony Nocella II, and Peter McLaren, in their edited vol- ume on academic repression, incisively observe that academic freedom, in fact, functions as an “alibi for the machinery of academic repression and control” and ends up justifying the “absorption of higher education into the larger constellation of corporate-military power.”**95 Academic repression, they argue, is constitutive of the academic-military-industrial complex, a framework that situates the university squarely within, and not outside of, the network of state apparatuses of control, discipline, surveillance, carcer- ality, and violence, as alluded to by Dominguez and as argued by Godrej, Oparah, and Gumbs. In other words, as Taraki and Barghouti also suggest, it does not make sense (for progressives-le ists) to ght for academic free- dom outside of the struggle against neoliberal capitalism, racism, sexism, homophobia, warfare, and imperialism. To state it more clearly, there can be no true “freedom” in the academy if there is no such freedom in society at large.96 e holy grail of academic freedom, de ned within the liberal param- eters critiqued by Prashad, has been institutionalized as a limited and prob- lematic horizon for progressive academic mobilization. **Academic freedom maintains the illusion of an autonomous university space in a militarized and corporate society such as the United States and in a “surveillance soci- ety and post-Constitutional garrison state” that continues to be consolidated under Obama, as suggested by Dominguez and other authors.97 is does not mean giving up entirely on invoking academic freedom, for it can be, and is, o en strategically used as a minimal line of defense to introduce criti- cal ideas and broaden public debates within the academy.** However, progres- sive campaigns organized around the principle of academic freedom o en run into a profound fault line in their mobilization, if not also organized around larger political principles. **In our experience, campaigns focused on organizing in defense of scholars targeted since 9/11, especially those work- ing in Middle East and Palestine studies, o en end up struggling with these same contradictions if they attempt to cohere simply around “academic free- dom” rather than a more rigorous (progressive) political consensus, given how fractured the academic le is when it comes to Middle East politics and Israel-Palestine. Critics of the academy, such as Readings, make a fundamental point:** “ e University is not going to save the world by making the world more true,” and it must be viewed as all institutions are, not as an exceptional space or site of radicalism and “redemption” but as a site where “academ- ics must work without alibis, which is what the best of them have intended to do.”98 **In other words, the university is an institution within an impe- rial nation-state—a point understated by Readings—and so any struggle waged within or against it must not romanticize its progressive possibilities and must be squarely situated within a struggle that extends beyond its hal- lowed walls. is is what the Occupy movement, discussed at the outset, attempted to do on many campuses, and this is also why it was so brutally suppressed—because it made a linkage between the university and larger structures of power, as in earlier movements of student uprising, that was fundamentally threatening to the imperial university.**

#### Academic freedom is not neutral – it only actually protects those in the majority – it’s even invoked to *justify firing professors.*

**Chatterjee et al:** Chatterjee, Piya [Dorothy Cruickshank Backstrand Chair of Gender and Women’s Studies Chair of the Feminist, Gender, and Sexuality Studies Department, Scripps College] and Sunaina Maira [Professor of Asian American Studies, UC Davis]. *The Imperial University: Academic Repression and Scholarly Dissent*. University of Minnesota Press, 2014. RP

-Didn’t protect people during McCarthyism

**Following from the production of manifest knowledges and logic of academic containment in the imperial university, the chapters in this section explore how liberal codes of academic freedom are undermined or consolidated as neoliberal privatization weakens spaces of critique in the academy. The chap- ters by De Genova, Prashad, and Dominguez in the concluding section of the book, as well as other chapters, critique what could be described as the “holy grail” of academic freedom, one of the pillars upon which academic liberalism builds its edi ce and which is central to the academic wars. We argue that there is a narrowing of the eld of possible dissent in the U.S. academy precisely because of the ways in which the repression of knowledge production and the resistance to academic repression are both constituted through notions of academic freedom and academic heresies**. We gestured earlier to how the development of “academic freedom” took place against the backdrop of World War I and the early twentieth century precisely because of the nonconformity of individual scholars in class and wartime politics. Academic freedom emerged as a way to both negotiate a sense of professional insecurity as well as construct a measured response to matters of “national interest” (such as anticapitalist or antiwar protest). is was a critical time for establishing the protocols of professionalism for aca- demia. Ellen W. Shrecker, in her magisterial study of McCarthyism’s e ects on the academy, argues that the pivotal Seligman Report by the AAUP in 1915 “reveals how deeply enmeshed the notion of academic freedom was with the overall status, security and prestige of the academic profession.”73 It is apparent that academic freedom continues to be fragile given the increas- ing professionalization of the academy and hypercompetitiveness of the aca- demic job market. Indeed, De Genova’s experience of “crossing the line” at Columbia Uni- versity, in the post-9/11 climate of hypernationalism, is part of a genealogy that he traces to 1917, when Columbia penalized two faculty members for their public opposition to World War I. A controversy arose at the time about the distinguished historian, Charles Beard, who remarked in 1916 (during debates about U.S. “neutrality”) that the “world’s strongest republic could certainly withstand the inconsequential e ort of a single ‘To Hell with the Flag’ comment.”74 Outraged trustees at Columbia interrogated Beard about his comment and political views in an unpleasant echo of De Genova’s own account of academic repression. ough Beard was eventually “exon- erated,” he resigned when his two colleagues at Columbia were terminated due to their political views. A powerful precedent about the boundaries of political—especially antistate—speech was set into motion. Where were “academic freedom” and the AAUP during this ferment? e newly created organization kept a distance from the unrest envelop- ing the Columbia campus and was “unwilling to o er its limited assistance to those being driven o campuses.”75 Schecter argues that the AAUP’s early discussions of academic freedom sought primarily to protect faculty from outsiders’ “meddling” with scholar’s teaching and research by setting up “procedural safeguards**.” But these safeguards could not adequately address political dissidence or any political positions that were considered “unsym- pathetic” by the majority of academics. What appeared to be “protection” was really about perceptions, and evaluations, of institutional loyalty and “appropriate” behavior that would not jeopardize the professionalism and status of academia. When the litmus test of the AAUP’s politics and “academic freedom” arrived four decades later, in the form of McCarthyite repression, the acad- emy’s capitulation to state imperatives and the subsequent destruction of many individual careers and lives should not come as a surprise. Prashad points out that faculty were expelled for their relationship to the Communist Party under the guise of defending academic freedom, for to be a Commu- nist was to be enslaved by dogma and to be unfree. Academic freedom was constructed through a negative and reactive polarity to create the narrow boundaries for “permissible dissent” rather than a positive protection in sup- port of dissent.** Clyde Barrow observes, “It created an intellectually defensible zone of political autonomy for the professoriate, which . . . su ciently circumscribed as to exclude as unscholarly whatever political behavior the leading member of the academic community feared might trigger outside intervention.” Even when university presidents could have protected their faculty, most did not, as in the case at the University of Washington dis- cussed by Prashad. e fact that some university administrators could, and did, resist assaults on academic freedom showed that universities could have de ed state repression—but most chose not to.

#### Academic freedom is Eurocentric and creates a static liberal subject

**Chatterjee et al:** Chatterjee, Piya [Dorothy Cruickshank Backstrand Chair of Gender and Women’s Studies Chair of the Feminist, Gender, and Sexuality Studies Department, Scripps College] and Sunaina Maira [Professor of Asian American Studies, UC Davis]. *The Imperial University: Academic Repression and Scholarly Dissent*. University of Minnesota Press, 2014. RP

**Clearly, if academic freedom is invoked as a “holy grail” in regulating and containing the proper subjects of the imperial nation, the “bad” citizen of the academy is considered heretical**. As Ricardo Dominguez and Pulido, Abowd, and De Genova eloquently discuss, acts of transgression of the boundaries of belonging to the academic nation illuminate how narrow, and fragile, the universe of dissent is. **While it is perhaps easy to pinpoint, if not always to counter, the campaigns of right-wing and conservative scholars and activists against academic dissent, these chapters highlight an important point—that for academics, censorship and repression generally comes wrapped in a lib- eral mantle, and it is waged through the language of diversity, dialogue, and, o en, academic freedom itself**. Right-wing and neoconservative activists—or what Prashad calls “cultural vigilantes”—in the culture wars have not only strategically reshaped the discourse of diversity and feminism, as alluded to earlier, but also appropriated the language of “academic freedom.” Indeed, right-wing groups such as Horowitz’s Students for Academic Freedom have used the notion of “intellectual pluralism” to police teaching and invoked academic freedom as a new ideological battle cry for the right. So the fol- lowing are the crucial questions: How is it possible to transform academic freedom into a justi cation for the closing down, rather than opening up, of intellectual and political debates? What inheres in the principle of academic freedom that allows it to be appropriated, apparently seamlessly, by those who align themselves with the political and economic status quo? **The answers lie, to a large extent, in the definition and utilization of aca- demic freedom as a liberal principle and in the paradoxes that this liberal politics generates in the academy and beyond**. Prashad argues that the lib- eral precept of academic freedom draws on John Stuart Mills’s conception of the necessity of “contrary opinions” for providing checks and balances for social norms but not for enabling a “transformative political agenda.” **A Eurocentric genealogy of academic freedom would trace it to notions of critical pedagogy in German universities in the eighteenth and nineteenth centuries, intertwined with notions of economic and political liberalism embedded in Enlightenment modernity.**

#### Academic freedom isn’t free speech

**Chatterjee et al:** Chatterjee, Piya [Dorothy Cruickshank Backstrand Chair of Gender and Women’s Studies Chair of the Feminist, Gender, and Sexuality Studies Department, Scripps College] and Sunaina Maira [Professor of Asian American Studies, UC Davis]. *The Imperial University: Academic Repression and Scholarly Dissent*. University of Minnesota Press, 2014. RP

**Other scholars, such as Judith Butler, also point out that the AAUP’s formulation of academic freedom intended to “institutionalize a set of employer-employee relationships in an academic setting,” not to guarantee academic freedom as an individual right. While she agrees with Post that academic freedom should not be rooted in “individual freedom” or simply in First Amendment rights of freedom of expression, she goes further to point to the collusion between the university and the state in de ning pro- fessional norms and professional freedom in scholarship and to emphasize that expectations of what is permissible for academics are always historically evolving and often politically motivated**. So these professional constraints are contingent and contested, not fixed; Butler argues, “As faculty members, we are constrained to be free, and in the exercise of our freedom, we continue to operate within the constraints that made our freedom possible in the rst place.”

#### Academic freedom is a palliative

**Chatterjee et al:** Chatterjee, Piya [Dorothy Cruickshank Backstrand Chair of Gender and Women’s Studies Chair of the Feminist, Gender, and Sexuality Studies Department, Scripps College] and Sunaina Maira [Professor of Asian American Studies, UC Davis]. *The Imperial University: Academic Repression and Scholarly Dissent*. University of Minnesota Press, 2014. RP

Barghouti and Taraki make two crucial points: **First, they state that academic freedom cannot trump other rights to freedom (and other freedoms)—the right to freedom of mobility for students and scholars to attend college, to travel to conferences, and to do research; the collective right to self-determination; the freedom from occupation and racial segrega- tion; and, in essence, the freedom to live in peace, dignity, and equality**. As suggested by our introductory vignettes, the freedom and right to education of students living in zones of occupation and war overseas must be linked to the freedom of students and scholars working—and protesting—within the imperial university. Proponents of the academic boycott of Israeli institu- tions argued that the campaign is, thus, in support of and produces academic freedom, and also supports human rights for all—as it was in the boycott of South African institutions. Second, they allude to the selectivity of the prin- ciple of academic freedom—why South Africa and not Palestine?—and the ways in which the U.S. academy (like the Israeli academy) and professional associations such as the AAUP are rmly embedded in a political context while pretending to be outside or above it. This adjudication of neutrality and self-professed impartiality is, in fact, a political stance, as argued by Salaita and illustrated by De Genova’s reflections on the limits of academic solidarity with radical critiques of U.S. imperialism. **The holy grail of academic freedom shores up the political com- mitments and investments—not to mention the intellectual freedoms—of powerful academics and constituencies and fails to protect the commitments and interventions of the heretics who are less powerful or far outside the sta- tus quo**. is is powerfully illustrated by the intense political campaign tar- geting De Genova for his “blasphemous” criticism of U.S. military violence and Dominguez’s farcical play about his experience of being investigated by the FBI and UC San Diego due to the Electronic Disturbance eater’s “vir- tual sit-in” protesting the UC fee hikes and the Transborder Immigrant Tool project.91 **We must ask, why is it that some cases of academic “blasphemy” provoke an outpouring of sympathy and support from colleagues while other cases are considered too heretical to warrant (ready) solidarity**? Nelson’s own writing on academic freedom is instructive in revealing the AAUP president’s political position on academic freedom and its limits— just one instance of exceptionalisms in the intense debate about academic freedoms and heresies among distinguished, progressive scholar-activists. In No University Is an Island: Saving Academic Freedom, Nelson denounces “major fractions of the Le ,” especially academics, who have apparently “grown increasingly hostile and unforgiving toward Israel.”92 Nelson’s sweep- ing statements include anecdotal observations of departments (unnamed) that have apparently refused to consider job candidates who do not support the two-state solution or who support Israel, proclaiming without any spe- ci c evidence that there is a hostile academic environment for “faculty and students with sympathies for Israel.”93 One wonders if Nelson is speaking of the same U.S. academy that the authors in this book—and so many other scholars—inhabit and work in or whether he is, indeed, living on “an island.” We discuss the Bellagio train wreck and Nelson’s position here because of the prominent role of the AAUP in adjudicating and de ning the boundar- ies of academic freedom—and academic heresies—as evident in more recent controversies.94 Despite the AAUP’s otherwise impressive record on issues related to academic labor, the issue of Palestine-Israel seems to be a sticking point for the organization, as is the case in so many other liberal-progressive spaces, including academic ones—precisely because it is obfuscated through a discourse of academic freedom. is illustrates the fault lines in a principle of academic freedom that evacuates politics, in selective instances, or cir- cumscribes and contains what is proper politics for academics, shaping the stance that scholars can or should take in response to twenty- rst-century occupation, settler colonialism, wars, apartheid, and encampment. **Steven Best, Anthony Nocella II, and Peter McLaren, in their edited vol- ume on academic repression, incisively observe that academic freedom, in fact, functions as an “alibi for the machinery of academic repression and control” and ends up justifying the “absorption of higher education into the larger constellation of corporate-military power.”95 Academic repression, they argue, is constitutive of the academic-military-industrial complex, a framework that situates the university squarely within, and not outside of, the network of state apparatuses of control, discipline, surveillance, carcer- ality, and violence, as alluded to by Dominguez and as argued by Godrej, Oparah, and Gumbs. In other words, as Taraki and Barghouti also suggest, it does not make sense (for progressives-le ists) to fight for academic freedom outside of the struggle against neoliberal capitalism, racism, sexism, homophobia, warfare, and imperialism. To state it more clearly,** there can be no true “freedom” in the academy if there is no such freedom in society at large.

#### The Aff’s centering of academic freedom is regressive – we need broader political demands

**Chatterjee et al:** Chatterjee, Piya [Dorothy Cruickshank Backstrand Chair of Gender and Women’s Studies Chair of the Feminist, Gender, and Sexuality Studies Department, Scripps College] and Sunaina Maira [Professor of Asian American Studies, UC Davis]. *The Imperial University: Academic Repression and Scholarly Dissent*. University of Minnesota Press, 2014. RP

**The holy grail of academic freedom, defined within the liberal param- eters critiqued by Prashad, has been institutionalized as a limited and prob- lematic horizon for progressive academic mobilization. Academic freedom maintains the illusion of an autonomous university space in a militarized and corporate society such as the United States and in a “surveillance soci- ety and post-Constitutional garrison state” that continues to be consolidated under Obama, as suggested by Dominguez and other authors**. This does not mean giving up entirely on invoking academic freedom, for it can be, and is, o en strategically used as a minimal line of defense to introduce critical ideas and broaden public debates within the academy. **However, progres- sive campaigns organized around the principle of academic freedom o en run into a profound fault line in their mobilization, if not also organized around larger political principles. In our experience, campaigns focused on organizing in defense of scholars targeted since 9/11, especially those work- ing in Middle East and Palestine studies, o en end up struggling with these same contradictions if they attempt to cohere simply around “academic free- dom” rather than a more rigorous (progressive) political consensus**, given how fractured the academic le is when it comes to Middle East politics and Israel-Palestine.

### West

#### Political correctness and condemning microaggressions are key to ever achieving true free speech.

**West:** West, Lindy [Contributor, The Guardian] “‘Political correctness’ doesn’t hinder free speech – it expands it.” *The Guardian.* November 2015. RP

The details of this memory are hazy, but the message has never left me. I think it was 2000 or 2001, my first year of college – one of those nights, maybe, when the Los Angeles air feels like bathwater and the sunset is so primordial you expect dinosaurs to raise long necks between the palm trees. I remember standing on the quad, looking up at the smaller of our two dining halls and noticing the uniformed pairs of security guards stationed at all three entrances. This was not normal, which is why I remember. **“Why is Campus Safety everywhere?” I asked some older student in passing, someone who knew things. I don’t remember who it was, but I remember their air of sardonic resignation, like they were about to tell me something shameful but juicy. “Oh,” they said, “they always beef up security when the black frat has a party.” This was at a liberal college in a liberal city in a liberal state on the west coast of the US, thousands of miles from any civil war battleground or reverently restored slave plantation; it was a microaggression so macro that even I could see it, an 18-year-old white girl whose grasp on racial politics could generously be called foetal.** Recognition unfurled around me like a hall of mirrors. Thanks to the advent of social media, similar moments of recognition are being forced upon millions of Americans who, just a decade ago, were luxuriously unreachable. Many are not taking to it particularly well. Before Facebook, you could wear blackface to your company Halloween party and not get yelled at online by your florist’s niece. Before Twitter, you could make a dumb-blonde joke over the humidor with Kevin without having it screengrabbed and sent to your mum. It seems you can’t say anything any more, the aphorism goes, without the politically correct police bringing down the hammer. The reality is, of course, that blackface and casual misogyny were just as corrosive to black and female humanity in 1998 as they are in 2015; sensitivity hasn’t changed – access has. The punchlines are punching back. But it’s much easier to ignore your complicity in oppressive systems if you can cast the people who have been legitimately harmed as “oversensitive”. **The American university system is currently the battleground for what looks to be our next great culture war: free speech versus political correctness. On one side are the ever- harrumphing Reasonable White Men, such as New York Magazine’s Jonathan Chait, who fretted extravagantly over “political correctness” in an interview with National Public Radio: “I would define PC as a new ideology that is completely intolerant of dissent on issues relating to race and gender. So, it’s an illiberal kind of politics that does not grant any political legitimacy to criticism on identity issues. So, even if it’s made in response to legitimate racism and legitimate sexism that people have every right to be concerned about, it shuts down democratic politics in a way that we should be concerned about.” The other side – which is not really a “side” at all so much as a vast, multifarious crowd of marginalised people all advocating for their own humanity with varying degrees of success and silliness – includes trauma survivors requesting trigger warnings, feminists criticising rape jokes, people of colour trying to explain cultural appropriation to white people who think the earth is their toy chest, and black students sick of universities gobbling their tuition money but treating them like dangerous interlopers. Framing free speech and political correctness as opposing forces is a false dichotomy intended to derail uncomfortable but necessary conversations, a smokescreen ginned up by the ethically lazy. The fact is, political correctness doesn’t hinder free speech – it expands it**. But for marginalised groups, rather than the status quo. On the campuses of Yale University and the University of Missouri last week, the weariness and anger of black students coalesced into protests that have inspired much anti-PC handwringing and infighting in progressive circles. In Missouri, student protesters forced the resignation of university president Timothy Wolfe, who they said had allowed a racist campus culture to flourish. At Yale, black students clashed with white professors over whether or not discouraging kids from wearing blackface on Halloween was an authoritarian silencing manoeuvre. Yale protestors were filmed screaming in the face of Silliman College master Nicholas Christakis, demanding his resignation; at the University of Missouri, protestors shut out and shoved (which, yes, absolutely crosses a line) a news photographer who was attempting to document their hunger strike. Videos of the screaming and the shoving have been used to discredit the protests, downplay systemic racism, frame protesters as frivolous whiners (especially in the Yale case) and argue that college activists are not simply ignorant of the first amendment, they’re openly hostile to it. **But here is the thing: white students parading around campus in blackface is itself a silencing tactic. Telling rape victims that they’re “coddled” is a silencing tactic. Teaching marginalised people that their concerns will always be imperiously dismissed, always subordinated to some decontextualised free-speech absolutism is a silencing tactic. Framing student protests as bratty “political correctness gone mad” makes campuses a hostile environment for everyone except for students who have no need to protest**. Blandly discouraging minority groups from full participation in civic life is such an old, entrenched tactic that it doesn’t register. It’s like furniture. Meanwhile, it’s Chait’s demographic that holds the real institutional power; the Chaits of the world who make up the majority of finance and entertainment and government; Chait and company who have the short-sightedness to imply that black Americans being shot in the streets by agents of the state are the real puppetmasters of an authoritarian regime. **Right. If you’re genuinely concerned about “free speech”, take a step back and look at what’s actually happening here: a bunch of college students, on the cusp of finding their voices, being publicly berated by high-profile writers in national publications because they don’t like what they have to say**. Are you sure you know who’s silencing whom?

### Calvert

#### Fake news is constitutionally protected

**Calvert:** Calvert, Clay [Professor & Brechner Eminent Scholar in Mass Communication and Director of the Marion B. Brechner First Amendment Project at the University of Florida, Gainesville, Fla. B.A., 1987, Communication, Stanford University; J.D. (Order of the Coif), 1991, McGeorge School of Law, University of the Pacific; Ph.D., 1996, Communication, Stanford University. Member, State Bar of California.] “[Fake News, Free Speech, & the Third-Person Effect: I’m No Fool, But Others Are](http://wakeforestlawreview.com/2017/02/fake-news-free-speech-the-third-person-effect-im-no-fool-but-others-are/).” February 2017. RP

**Of course, government efforts to regulate and criminalize purveyors of fake news clash with fundamental notions of free speech protected by the First Amendment, particularly political expression, which lies at the heart of that amendment. Even deliberate, non- libelous falsehoods can be protected, as the U.S. Supreme Court recognized in United States v. Alvarez. To punish false speech via legal mechanisms other than defamation and fraud, the government would also need to demonstrate what the Supreme Court has called “a direct causal link” between the speech in question and the problem or harm it supposedly produces**. A mere correlation between speech and harm will not suffice; instead, causation must be proved. There is, of course, no empirical evidence demonstrating that fake news caused the outcome of the 2016 presidential election to be different from what it would have been without fake news.

#### Another reason its not CPS

**Calvert:** Calvert, Clay [Professor & Brechner Eminent Scholar in Mass Communication and Director of the Marion B. Brechner First Amendment Project at the University of Florida, Gainesville, Fla. B.A., 1987, Communication, Stanford University; J.D. (Order of the Coif), 1991, McGeorge School of Law, University of the Pacific; Ph.D., 1996, Communication, Stanford University. Member, State Bar of California.] “[Fake News, Free Speech, & the Third-Person Effect: I’m No Fool, But Others Are](http://wakeforestlawreview.com/2017/02/fake-news-free-speech-the-third-person-effect-im-no-fool-but-others-are/).” February 2017. RP

Regardless of political perspective or whether Feldman is correct, **the First Amendment protects a vast amount of speech that is both false and worthless, including persistent denials of the Holocaust. As the late Florida State University Professor Steven Gey wrote in a 2008 article that nine years later seems incredibly relevant for fake news, the government “cannot suppress statements of fact simply because they are demonstrably untrue and may lead astray those who hear the statements and are too lazy or dim-witted to sort out truth from falsehood.”[28] Indeed, the U.S. Supreme Court in 2010 made it clear that “[t]he First Amendment confirms the freedom to think for ourselves.”**

### Solon

#### Fake news misinforms people and destroys communal bonds – fact checking can’t solve.

**Solon:** Solon, Olivia [Contributor, The Guardian] “Facebook’s failure: did fake news and polarized politics get Trump elected?” *The Guardian.* November 2016. RP

**It typifies the kind of fake news and misinformation that has plagued the 2016 election on an unprecedented scale.** In the wake of the surprise election of Donald Trump as president of the United States, pressure is growing on Facebook to not only tackle the problem but also to find ways to encourage healthier discourse between people with different political views. **Rather than connecting people – as Facebook’s euphoric mission statement claims – the bitter polarization of the social network over the last eighteen months suggests Facebook is actually doing more to divide the world. “People have unfriended friends and family members because the style of discourse is so harsh,” said Claire Wardle, research director at the Tow Center for Digital Journalism. “Facebook stumbled into the news business without systems, editorial frameworks and editorial guidelines, and now it’s trying to course-correct.”** Facebook will need to change its business model if it does want to address these editorial challenges. Currently, the truth of a piece of content is less important than whether it is shared, liked and monetized. These “engagement” metrics distort the media landscape, allowing clickbait, hyperbole and misinformation to proliferate. And on Facebook’s voracious news feed, the emphasis is on the quantity of posts, not spending time on powerful, authoritative, well-researched journalism. The more we click, like and share stuff that resonates with our own world views the more Facebook feeds us with similar posts. **This has progressively divided the political narrative into two distinct filter bubbles – one for conservatives and one for liberals (a blue feed and a red feed), pulling further and further apart in the run-up to election day**. ‘Dust cloud of nonsense’ These information bubbles didn’t burst on 8 November, but the election result has highlighted how mainstream media and polling systems underestimated the power of alt-right news sources and smaller conservative sites that largely rely on Facebook to reach an audience. The Pew Research Center found that 44% of Americans get their news from Facebook. Yet fake news is not a uniquely Republican problem. An analysis by BuzzFeed found that 38% of posts shared from three large rightwing politics pages on Facebook included “false or misleading information” and that three large leftwing pages did the same 19% of the time. What is a uniquely Republican problem is the validation given to fake news by the now president-elect. **Trump has routinely repeated false news stories and whipped up conspiracy theories – whether that’s questioning Obama’s heritage, calling climate change a hoax or questioning “crooked” Hillary Clinton’s health – during high-profile rallies, while urging his followers not to trust corrupt traditional media.** The conspiracy theories are amplified by a network of highly partisan media outlets with questionable editorial policies, including a website called the Denver Guardian peddling stories about Clinton murdering people and a cluster of pro-Trump sites founded by teenagers in Veles, Macedonia, motivated only by the advertising dollars they can accrue if enough people click on their links. The situation is so dire that this week President Obama spoke about the “crazy conspiracy theorizing” that spreads on Facebook, creating a “dust cloud of nonsense”. “There is a cottage industry of websites that just fabricate fake news designed to make one group or another group particularly riled up,” **said Fil Menczer, a professor at Indiana University who studies the spread of misinformation. “If you like Donald Trump and hate Hillary Clinton it’s easy for you to believe a fake piece of news about some terrible thing Hillary has done**. These fake news websites often generate the same news just changing the name to get people on either side to be outraged.” Menczer and his Indiana University colleagues hope to better understand how fake news, and how pieces debunking fake news, spread through social media by launching a range of analytical, non-profit tools later this year. The misinformation being spread doesn’t always involve outlandish conspiracy theories. **There’s a long tail of insidious half truths and misleading interpretations that fall squarely in the grey area, particularly when dealing with complex issues like immigration, climate change or the economy**. “Not everything is true or false, and in the gaps between what we can check and what is missing from our control we can create a narrative,” said Italian computer scientist Walter Quattrociocchi, who has studied the spread of false information. “**Trump won at this. He was able to gather all the distrust in institutional power by providing an option for people looking for a change**.” “These things are very hard to detect automatically if they are true or not,” said Menczer. “Even professional fact-checkers can’t keep up.” **According to Menczer’s research there’s a lag of around 13 hours between the publication of a false report and the subsequent debunking. That’s enough time for a story to be read by hundreds of thousands if not millions of people. Within Facebook’s digital echo chamber, misinformation that aligns with our beliefs spreads like wildfire, thanks to confirmation bias. “People are more prone to accept false information and ignore dissenting information**,” said Quattrociocchi. “We are just looking for what we want to hear.” It’s a quirk of human psychology that the UK Independence party (Ukip) toyed with during the campaign for Britain to leave the EU. Arron Banks, Ukip’s largest donor, told the Guardian that facts weren’t necessary for winning. “It was taking an American-style media approach. What they said early on was ‘facts don’t work’ and that’s it. You have got to connect with people emotionally. It’s the Trump success.” While it’s human nature to believe what we want to hear, Facebook’s algorithms reinforce political polarization. “You are being manipulated by the system [for falling for the fake news] and you become the perpetrator because you share it to your friends who trust you and so the outbreak continues,” said Menczer. It’s a perfect feedback loop. So how do you break it? Menczer says the solution is to create a filter. Before social media, the filter was provided by media companies, who acted as gatekeepers to the news and had staff trained in fact-checking and verifying information. In an age of budget cuts in traditional media, and the rise of clickbait and race-to-the-bottom journalism, standards have slipped across the board. “Now the filter is us. But that’s not our job so we’re not good at it. Then the Facebook algorithm leverages that and amplifies the effect,” said Menczer. And so we come back to the algorithm. Despite continually insisting that it’s a neutral technology platform and not a media company, Facebook is all-too aware of the influence it has to drive footfall to the polling stations. Around 340,000 extra people turned out to vote in the 2010 US congressional elections because of a single election-day Facebook message, according to a study published in Nature. In a separate study the social networking site worked out how to make people feel happier or sadder by manipulating the information posted on 689,000 users’ news feeds. It found it could make people feel more positive of negative through a process of “emotional contagion”. So what should Facebook do? It’s certainly not going to be easy. It has tried – and failed – to get a grip on the problem before, launching a tool to let users report false information in January 2015. (That ultimately failed because it relied on users, who turned out not to be very good at spotting fake news and also to falsely report a story as “fake” if they didn’t agree with it.) In September 2016, the company joined a coalition, along with Twitter, to improve the quality of reporting on social media and cut down on fake news. We have yet to see the fruits of this alliance. In the interim, Facebook found itself in trouble over the team of humans who were curating its trending news section. According to a former journalist who worked on the project, the team was routinely told to suppress news stories of interest to conservative readers. The company was widely criticized for playing the role of censor and being biased against Republicans. That led Facebook to fire the editors and let the algorithm decide what’s trending. Since then fake news has repeatedly found its way into the highly influential trending list. “Instead of hiring more editors to check the facts, they got rid of the editors and now they are even more likely to spread misinformation,” said Menczer. “They don’t see themselves as a media company and they run the risk of being told they are picking sides. They are in a tough spot, but they are also making a lot of money.” Facebook’s continued rejection of the idea that it is a media company doesn’t sit well with some critics. “It sounds like bullshit,” said high-profile investor Dave McClure, speaking from the Web Summit in Lisbon a few hours after an expletive-filled on-stage rant about Trump. “It’s clearly a source of news and information for billions of people. If that’s not a media organization then I don’t know what is.” He added that technology entrepreneurs have a responsibility to enable a “more well-rounded experience” for their audiences. “A lot of them are only thinking about how to make money. Maybe we need to mix in having ethics and principles and caring about the fact that people have a reasonable and rational experience of the information they process. Although that sounds a little too utopian.” One solution could be to try to reduce the effect of filter bubbles by showing users a wider variety of opinions than their own. Even if people have a tendency to reject those opinions, at least they’ll be exposed to a diversity of views. Wardle suggests that to tackle fake news, Facebook could introduce a mechanism to allow fact checking organisations to report false stories to Facebook so they don’t continually circulate. “Of course, people will shout censorship, so maybe Facebook could choose to change the way it display certain stories instead,” she said. This is problematic because Facebook would have to manipulate the algorithm to make it less likely you would see something from a site categorized as disreputable. This would potentially involve discounting content your friends were interested in. “Then we would not like the platform as much because we like seeing stuff our friends are liking and sharing,” said Menczer. All of these issues point towards the inevitability of Facebook acknowledging that it’s no longer just a technology company, but a media company – the media company. In Mark Zuckerberg’s first Facebook update post-election, he talked about the need for everyone to work together. “We are all blessed to have the ability to make the world better, and we have the responsibility to do it. Let’s go work even harder,” he said. Wardle is skeptical. “That’s all well and good - but start by changing your platform.”

### Giroux – 1984

#### Conservative news outlets propagating fake news power Trump’s agenda and neoliberalism

**Giroux:** Giroux, Henry A. [Waterbury Chair Professor, Pennsylvania State University] “Combating Trump's Neo-Fascism and the Ghost of ‘1984’.” Truthout. February 2017. RP

**Normalization is about more than dominant media outlets being complicit with corrupt power or willfully retreating from any sense of social responsibility; it is also about aiding and abetting power in order to increase the bottom line and accumulate other cowardly forms of power and recognition. This is evident in the fact that some powerful elements of the mainstream press not only refused to take Trump seriously, they also concocted embarrassing rationales for not holding him to any viable sense of accountability**. For instance, Gerard Baker, the editor-in-chief of The Wall Street Journal, publicly announced that in the future he would not allow his reporters to use the word "lie" in their coverage. NPR also issued a statement arguing that it would [not use the word "lie"](http://variety.com/2017/biz/news/npr-donald-trump-lies-1201969581) on the grounds that "the minute you start branding things with a word like 'lie,' you push people away from you." In this truly Orwellian comment, NPR is suggesting that calling out lies on the part of governments and politicians should be avoided by the media on the grounds that people might be annoyed by having to face the contradiction between the truth and misinformation. This is more than a retreat from journalism's goal of holding people, institutions and power to some measure of justice; it also legitimizes the kind of political and moral cowardice that undermines informed resistance, the first amendment and the truth. While such actions may not rise to the level of book burning that was characteristic of various fascist and authoritarian regimes in the past, it does mark a distinctive retreat from historical memory and civic courage that serves to normalize such actions by making dissent appear, at best, unreasonable and at worst, an act of treason. **Such actions become apparent in efforts by the mainstream press to rage against the rise of "fake news," suggesting that by doing so, their integrity cannot be questioned. Of course, the term "fake news" is slippery and can be deployed to political ends -- a maneuver which is on full display particularly when used by Trump and his merry band of liars to dismiss anyone or any organization that holds him accountable for his fabrications. Hence, there were no surprises when Trump at his first president-elect press conference refused not only to take questions from a CNN reporter because his network had published material critical of Trump but also justified his refusal by labeling CNN as fake news -- reducing the term to a slogan used to silence the press.** Clearly, we will see more of this type of bullying repression and censorship, and traditional democratic public spheres, such as higher education, will also feel the brunt of such an attack. Any analysis of the forces behind the normalization of the Trump administration and its assault on the truth, if not **democracy itself, must include the powerful role of the conservative media in the United States. Former conservative radio talk show host Charles Sykes recently published a**[**remarkable op-ed**](https://www.nytimes.com/2017/02/04/opinion/sunday/why-nobody-cares-the-president-is-lying.html)**arguing that over the last few decades, right-wing media played a major role in discrediting and delegitimizing the fact-based media. In doing so, it destroyed "much of the right's immunity to false information." According to Sykes, conservatives, including himself, created a "new post-factual political culture" that has become so powerful that even when the Trump administration is caught lying, it does so with impunity because it believes that "the alternative-reality media will provide air cover**" that allows it to pollute "political discourse" and discredit "independent sources of information." Evidence of this major assault on truth can be measured in part by the magnitude of the lies the administration produces, which are truly Orwellian. **For instance, Kellyanne Conway attempted recently to justify Trump's executive order banning people from seven majority-Muslim countries by referring to what she called the "Bowling Green massacre, an alleged terrorist attack by Iraqi refugees that was to have taken place in 2011. According to Conway, Obama instituted a six-month ban on Iraqi resettlements. The attack never happened, no Iraqis were involved and the Obama administration never instituted such a ban. It gets worse. White House Press Secretary Sean Spicer recently claimed that Iran had committed an act of war by attacking a US Naval vessel. That never happened.** What did happen is that a Saudi ship off the coast of Yemen was attacked by Houthi rebels. Normalization has many registers and one of the most important is the control by the financial elite over commanding cultural apparatuses that produce, legitimize and distribute highly selective media narratives that shore up the most reactionary ideologies and financial interests. The mainstream press says little about how such actions serve as an apology for the egregiously reactionary nature of Trump's ideology and policies. Moreover, they fail to note how distortions of the truth, the endless production of lies by governments, politicians and corporations, along with the media's flight from civic literacy, serve to bolster authoritarian societies willing to distort the truth while simultaneously suppressing dissent. Under such circumstances, it should not be surprising that Trump's authoritarian and hateful discourse, threats of violence, loathing of dissent and racist attitudes toward Muslims, Blacks and Mexican immigrants are downplayed in the mainstream media. These structured silences have become more and more apparent given the benign manner in which the supine press and its legion of enervated anti-public intellectuals and pundits treat Trump's endless nighttime Twitter outpourings and his incessant choreographed public fabrications. For instance, The Wall Street Journal's refusal to address critically Trump's endless lies and insults is matched by the highbrow New Yorker's publishing of [a piece on Trump](http://www.newyorker.com/magazine/2017/01/09/intellectuals-for-trump) that largely celebrates uncritically how he is viewed by conservative intellectuals, such as Hillsdale College president, Larry Arnn. Arnn supports Trump because he shares his view that "the government has become dangerous." If Arnn were referring to the rise of the surveillance and permanent war state, it would be hard to disagree with him. Instead, he was referring to the government's enforcement of "runaway regulations." What Arnn and Kelefa Sanneh, the author of the New Yorker article, ignore or conveniently forget is the fact that the real danger the government poses is the result of it being in the hands of demagogues, such as Trump, who are truly dangerous and threaten the planet, American society and the rest of the world. When Kelefa Sanneh mentions Trump's connection to the "alt-right," he underplays the group's fascist ideology and refuses to use the term "white supremacist" in talking about such groups, reverting instead to the innocuous-sounding term, "white identity politics." Trump's misogyny, racism, anti-intellectualism, Islamophobia and hatred of democracy are barely mentioned. Sanneh even goes so far as to suggest that since Trump has disavowed the "alt-right," his connection to neo-fascist groups is tenuous. This is more than an apology dressed up in the discourse of ambiguity; such reporting is a shameful retreat from journalistic integrity -- an assault on the truth that constitutes an egregious act of normalization. This is only one example of what is surely to come in the future under Trump's rule.

### Solorzano

#### Black counter-spaces function as a response to microaggressions and centers of Black activism

**Solorzano et al:** Daniel Solorzano, Miguel Ceja, Tara Yosso [Researchers, UC Schools] “Critical Race Theory, Racial Microaggressions, and Campus Racial Climate: The Experiences of African American College Students.” *Journal of Negro Education,* Volume 69. Spring 2000. RP

**In response to the daily barrage of racial microaggressions that they endure both in and outside of their classes, the African American students who participated in our focus groups indicated that they are creating academic and social "counter-spaces" on and off their campuses. These counter-spaces serve as sites where deficit notions of people of color can be challenged and where a positive collegiate racial climate can be established and maintained. Counter-spaces on the three campuses participating in our study were created within African American student organizations, organizations or offices that pro- vide services to African American and other students, Black fraternities and sororities, peer groups, and Black student-organized academic study halls. Some of these counter- spaces were co-created with African American faculty and exist within classrooms. Others existed within more social settings. As Solorzano and Villalpando (1998) have determined, academic counter-spaces allow African American students to foster their own learning and to nurture a supportive environment wherein their experiences are validated and viewed as important knowledge. According to our focus group participants, social counter-spaces were important because they afforded African American students with space, outside of the classroom confines, to vent their frustrations and to get to know others who shared their experiences of microaggressions and/or overt discrimination**. For example, one male student explained that he sought out such a counter-space for support at his university: ... that was one of the reasons why I chose to live on the African American theme floor [among the campus dormitories] ... because if I go home [at the end of the day] and I don't have the support, then that can really be discouraging.... [Y]ou need some type of support to get through this thing ... and if you're a freshman coming in, you don't know African American faces ... you need somewhere to start. Two African American female students shared similar conclusions: ... I just feel more comfortable dealing with African American people in every aspect ... counseling, financial aid. I just look for the first African American face I find because I feel like they're going to be more sympathetic. You know how you have African American crews, African American fraternities, and so forth. And then my sophomore year here, I was thinking about joining an African American sorority, and [a White fellow student] said, "Why do you want to join a African American sorority? Are those other sororities not good enough? You think that we're only White?" I said, "I don't think they're only White. It's just that ... I don't want to say [they're] anti-African American, but I don't feel welcome in your sorority." And she said, "What do you think we are, the Klan?" [and] I was like, "Okay, we're not going to go there." Many social counter-spaces also serve as academic counter spaces and vice-versa. For example, some students indicated that their study groups evolved into friendship groups and community outreach groups that provide them with educational, emotional, and cultural support. As a female African American student related: .. . the benefit that I have gained from [a study group of African American students] is that my involvement in the African American community has grown, and that's where I found a lot of my support. Even in terms of academics, I go study with the "homies" all the time. Go to [a certain student lounge] and you're going to see a million African American faces, and it's going to be cool.... You might not get that much studying done, but it's a cool little network that's created because classes are so uncomfortable.

### Harrison

#### Empirics go neg – revenge porn statutes have been struck down

**Harrison:** Harrison, Anne [Student Writer for The Journal of Gender, Race & Justice] “Revenge Porn: Protected by the Constitution?” *The Journal of Gender, Race & Justice.* 2015. RP

Ending a romantic relationship on sour note is difficult for both parties, but now imagine that one of the parties post compromising photos of the other on the Internet for all to see. Revenge porn, posting nude photos of one’s former partner on the Internet without his or her consent, often causes a detrimental effect on the victim. The victim may suffer extreme humiliation, and may even be terminated from his or her job. Legal scholars differ in how to handle revenge porn. Some find that criminalization is not necessary given that victims can already pursue civil suits. Others find that criminalization will serve as a better deterrence than civil action. As advocates push for laws prohibiting the distribution of nude photographs, a legal gray area has emerged based on the dueling freedom of expression contained in the first amendment and the substantive right to privacy. **Several states have passed laws criminalizing the nonconsensual posting of nude photographs, including New Jersey penalizing the act as a felony and California making it a misdemeanor to distribute images taken with the understanding that they would remain private. Some of these laws have been challenged on the ground that they unconstitutionally restrict freedom of speech. For example, ACLU filed a federal lawsuit against Arizona’s law, which made it illegal “to intentionally disclose, display, distribute, publish, advertise or o er a photograph, videotape, film or digital recording of another person in a state of nudity or engaged in specific sexual activities if the person knows or should have known that the depicted person has not consented to the disclosure.” Because the anti-revenge-porn criminal statutes at issue are content-based speech restrictions, the State has the burden of showing they meet strict scrutiny**. While content-based speech restrictions are presumptively invalid, legal scholars argue that the Supreme Court has held “where matters of purely private significance are at issue, First Amendment protections are less rigorous.” One scholar on the subject posited that such laws are likely to be upheld because the specific nude pictures involved “have nothing to do with public commentary about society.” There is some support for the notion that the laws will be upheld as cyber-stalking laws have not been found to violate the First Amendment. **Other scholars believe that anti-revenge porn statutes are criminalizing protected expression. They maintain that the “First Amendment is not a guardian of taste.” In its lawsuit against the state of Arizona, the ACLU argues that the Constitution protects speech even when that speech is o ense or emotionally distressing. The ACLU goes on to state that the Arizona law is overbroad in that it applies equally to private photographs and images that are “truly newsworthy, artistic, and historical images.**”

### Jackson

#### Black students want university speech codes

**Jackson:** Jackson, Symone [Contributor, Fusion] “5 Things Black Students Say Will End Racism On Campuses.” *Fusion.* April 2016. RP

As a recent grad who is still involved in campus activism, I know that students are doing some really amazing work and I want people to listen to what they’re saying. **So I spoke to leaders from several black student organizations in California and asked them what they’d like to see implemented. This is what they said: Schools should never tolerate harassment of students based on ethnicity, religion or gender, but as we saw in the ‘not guilty’ verdict in the case at SJSU, that isn’t always the case. At SJSU, the black student organization called BUG (Black Unity Group) has publicly demanded that SJSU adopt a zero-tolerance policy in cases of racial harassment, in response to the bicycle U-lock incident. “Black students would feel [safer] knowing that there is a standard policy set forth by the university,” said Brianna Leon, a student at SJSU who is an active member of BUG. “A lot of times students are passive and they don’t say anything. If the university made them aware of the policy, people would be more likely to come forward.”**

#### Multiplanked race counterplan

**Jackson:** Jackson, Symone [Contributor, Fusion] “5 Things Black Students Say Will End Racism On Campuses.” *Fusion.* April 2016. RP

As a recent grad who is still involved in campus activism, I know that students are doing some really amazing work and I want people to listen to what they’re saying. **So I spoke to leaders from several black student organizations in California and asked them what they’d like to see implemented. This is what they said: Stricter anti-discrimination policies. Schools should never tolerate harassment of students based on ethnicity, religion or gender, but as we saw in the ‘not guilty’ verdict in the case at SJSU, that isn’t always the case. At SJSU, the black student organization called BUG (Black Unity Group) has publicly demanded that SJSU adopt a zero-tolerance policy in cases of racial harassment, in response to the bicycle U-lock incident. “Black students would feel [safer] knowing that there is a standard policy set forth by the university**,” said Brianna Leon, a student at SJSU who is an active member of BUG. “A lot of times students are passive and they don’t say anything. If the university made them aware of the policy, people would be more likely to come forward.” **More cross-cultural learning Black student organizations are also demanding that their schools create or invest in training programs and courses to help every student and faculty member understand and respect the many cultures, socioeconomic backgrounds, and identities represented on campus**. San Diego State University offers an optional cultural competency certificate program for any student interested in “having the ability to recognize and respond to the diversity of the world around you and to make better decisions based on that understanding.” “**Growing up, we have U.S. history but we’re not taught our own history**,” said Leon, who thinks the cultural competency classes should be required of all students. “We should be taking other kinds of history [classes]. Once we’re more aware of each other and our cultures, we would probably treat each other better.” Less police, more student oversight **None of the students we spoke to want to see more police on their campus, saying student committees can challenge decisions made by school administrations, who may prioritize institutional interests over student interests. “Student oversight committees have the potential to put power in students hands rather than bureaucratic administrator**s,” said Blake Simons, a student at University of California, Berkeley who currently serves as the Communications Director of the Afrikan Black Coalition. “Oftentimes those in control of the universities, such as the UC Regents, come from elite backgrounds and consequently don’t have what’s best in mind for students and society at large.” More black “safe spaces” **Earlier this year, the Black Student Union at Oberlin University asked for the creation of exclusively black “safe spaces” on campus and were denied by the university president. Conservative media outlets were enraged by the BSU request, which they deemed “segregation.” Oberlin wasn’t the only place students were asking for these spaces. Black students at NYU, UC Berkeley, Scripps and Pomona colleges have made similar requests. Some students have even taken it upon themselves to create safe spaces informally in areas nearby their campuses. Late last year, when a 19-year old white Mizzou student threatened to “stand my ground tomorrow and shoot every black person I see" and students on campus reported hearing gunshots fired shortly thereafter, black students living off campus and nearby alumni opened their homes to provide refuge for black students who were evacuating campus**. “I know that once I became more involved on campus and met more people like me that I could identify with, my academic success began to rise,” said Sesley Lewis, the BSU president at California State University, Los Angeles. “Does that mean we’re promoting segregation [by asking for safe spaces]? Absolutely not. It’s essential to have spaces where we can vent and feel comfortable. If we’re not able to ground each other and hold each other down, that’s another thing that feeds into us not succeeding.” 1. **Divestment from the prison industrial complex The students we spoke to argue that black students cannot feel safe or welcome on college campuses as long as universities continue to invest in systems, like police forces and private prisons, which directly profit from the imprisonment and exploitation of black people. In 2012, California as a state accounted for 12% of revenue at the Corrections Corporation of America, Inc., the nation’s largest private prison company**. Late last year, Black Student Unions at all nine UC campuses passed a resolution calling for immediate divestment from prisons, which led to the University of California selling roughly $25 million worth of investments in private prison corporations. "[The resolution] is definitely a start, but it needs to keep going," said CSULB alumni Dominic McDonald, who is still heavily involved with the CSULB Black Student Union. "If people knew how much money was going into prisons, it would make California less attractive than it is now. It should be common knowledge for people to know where their tax money is going." The UCI Black Student Union, who was an integral part of the UC resolution, has plans to take it a step further and has already met with Janet Napolitano about their plans to pressure the UC administration to abolish police at all UC campuses. They said to Fusion in an e-mail: “Universities do not provide a sanctuary for black students... This is a problem across the nation, across the world. Racial violence animates all of the institutions we think are 'normal' or take for granted (i.e. family, school, desire, home, etc.).”

#### Black safe spaces advocacy

**Jackson:** Jackson, Symone [Contributor, Fusion] “5 Things Black Students Say Will End Racism On Campuses.” *Fusion.* April 2016. RP

**Earlier this year, the Black Student Union at Oberlin University asked for the creation of exclusively black “safe spaces” on campus and were denied by the university president. Conservative media outlets were enraged by the BSU request, which they deemed “segregation.” Oberlin wasn’t the only place students were asking for these spaces. Black students at NYU, UC Berkeley, Scripps and Pomona colleges have made similar requests. Some students have even taken it upon themselves to create safe spaces informally in areas nearby their campuses. Late last year, when a 19-year old white Mizzou student threatened to “stand my ground tomorrow and shoot every black person I see" and students on campus reported hearing gunshots fired shortly thereafter, black students living off campus and nearby alumni opened their homes to provide refuge for black students who were evacuating campus. “I know that once I became more involved on campus and met more people like me that I could identify with, my academic success began to rise,” said Sesley Lewis, the BSU president at California State University, Los Angeles. “Does that mean we’re promoting segregation [by asking for safe spaces]? Absolutely not. It’s essential to have spaces where we can vent and feel comfortable. If we’re not able to ground each other and hold each other down, that’s another thing that feeds into us not succeeding.”**

### SeLegue

#### The marketplace of ideas is inconsistent – defamation and other speech is punishable but not hate speech – more speech is empirically not better.

**SeLegue:** SeLegue, Sean M. [B.A. 1988, University of California, Los Angeles; J.D. candidate 1991, Boalt Hall School of Law, University of California, Berkeley.] “Campus Anti-Slur Regulations: Speakers, Victims, and the First Amendment.” *California Law Review.* May 1991. RP

**The "marketplace of ideas" is the cornerstone of first amendment doctrine as enunciated by the Supreme Court**. The marketplace model focuses on the role of speech in truth-seeking: Speech is the means by which people convey information and ideas, by which they communicate viewpoints and propositions and hypotheses, which can then be tested against the speech of others. Through the process of open discussion we find out what we ourselves think and are then able to compare that with what others think on the same issues. The end result of this process, we hope, is that we will arrive at as close an approximation of the truth as we can. **According to the marketplace theory, victims of offensive speech must find their remedy, if any, through "the market" by offering more speech. One problem with the marketplace theory is that some speech harms are not amenable to correction through the marketplace of ideas: "it has never been deemed an abridgement of freedom of speech or press to make a course of con- duct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed." For example, punishment for fraud or conspiracy to commit a violent crime is not generally recognized as an abridgement of speech (even though the speaker used words to commit those offenses), because the marketplace provides an inadequate remedy to the victims of these crimes. n48 The legal system is therefore free to provide a remedy through criminal punishment or damages**. The marketplace remedy is inadequate for victims of group-based epithets because the assaultive aspects of epithets cannot be redressed by more speech. n49 Following the line of reasoning in Cox v. Louisiana, n50 an effective assault accomplished through the intimidating effect of words -- buttressed by their relationship to a history of present and past mistreatment -- should not be immune from legal sanction merely because words are the weapon of choice. n51 **Indeed, it may be dangerous for a targeted hearer to attempt to use a "marketplace" remedy of more speech because that may only provoke the accosting speaker into physical violence**. By holding in Chaplinsky v. New Hampshire that "fighting words" could legitimately be punished, the Court suggested that the marketplace of ideas offered no remedy to the po- liceman who was called a "damned fascist." According to later decisions of the Court, fighting words lack protection because they do not contribute to truth-seeking and are therefore not part of the marketplace of ideas.  They do not express opinion but are solely emotive. If the Court had believed the situation in Chaplinsky could have been remedied by discussion of the falsehood and fallacies of the speaker's proposition, it would not have upheld Chaplinsky's conviction. n56 If there had been time "to expose through discussion the falsehood and fallacies, to avert the evil by the process of education, the remedy to be applied" would have been "more speech, not enforced silence." Thus, the Chaplinsky decision represents the Court's underlying recognition that some upsetting words, when personally directed to a particular target, may be punished le- gitimately by the state. **Therefore, more speech cannot readily eliminate the pressure for the target of a group-based epithet to escape and avoid the university environment or her reinforced belief that she does not belong at the university. Once the target has been jostled, the damage is done**. She may be upset for the next hour, the next week, or for her entire lifetime as a result of repeated incidents. Must she be forced constantly to respond with analytical argument to each verbal assault? The answer is plainly "no" for two reasons. First, as argued below, she has a right to be left alone from directly assaultive confrontations, even in public. Second, she cannot possibly respond within the marketplace of ideas to a communication that is es- sentially and primarily assaultive and therefore outside the realm of ideas. **Rational argument will not remedy the intimidation and fear visited upon the target of a group-based epithet.**

#### Some constitutivism thing idk

**SeLegue:** SeLegue, Sean M. [B.A. 1988, University of California, Los Angeles; J.D. candidate 1991, Boalt Hall School of Law, University of California, Berkeley.] “Campus Anti-Slur Regulations: Speakers, Victims, and the First Amendment.” *California Law Review.* May 1991. RP

The Restatement also allows recovery for conduct that is less than outrageous, in situations where the defendant stands in a relationship of [\*952] authority over the plaintiff. n206 This relationship must be one of custody or subordi- nation, real or assumed. n207 A duty to treat the plaintiff in a particular way, such as that owed by an innkeeper or a common carrier to its patrons, will subject the defendant to the higher standard of conduct. n208 Under this rationale, employers have a special duty to treat their employees with dignity and to protect them from abuse by fellow employees. n209 Not unlike the first amendment captive audience doctrine, n210 the justification for im- posing a duty upon employers to provide a working environment free of abuse flows from the fact that employees' free- dom to escape is, as a practical matter, quite limited. n211 Forcing someone to tolerate abuse in an environment from which she is unable as a practical matter to escape is especially heinous. n212 Inasmuch as the university regulations pun- ish students for abuse directed at university employees, the application of this doctrine is straightforward. The affirma- tive interest in protecting employees of the university from abuse would provide the university with a justification for punishing members of the community who harass or assault those employees. The application of this doctrine to abuse of one student by another student raises a more difficult issue. Although an analogy to the confines of the workplace appears at first glance somewhat strained for university students, the student-university relationship does in fact share many characteristics of the employment relationship which make both of special concern. n213 Neither employees nor students are really captive in the sense that they lack the legal right or the physical ability to leave the environment. Both the workplace and the university are best described as "discrete, definable 'experiences,'" rather than as physical relationships of person to locale. n214 Workers and students alike are defined by their overall relationship to the institution. Both employees and students are required as a practical economic matter to remain at the workplace or on the cam- pus. n215 Like an employee working on an employer's premises, students have an economic need to remain on campus. n216 University degrees and the knowledge [\*954] they represent are, like employment, scarce economic resources. n217 A university environment free of harassment and intimidation is particularly crucial because students need to devote their attention and energy to their studies rather than to reacting to a hostile and threatening environment. Abused and harassed students require the university's protection because, like employees, they are subordinate members of the insti- tution, are vulnerable to dismissal, and have little power of their own to remedy wrongs against them. n218 The authors of Comment, supra note 86, at 902 , argue, however, that it is "incoherent" to equate the college campus with the workplace because the student's job (should she choose to place herself in a public forum on campus) is, unlike ordinary occupations, "to consider and analyze ideas that may be expressed in potentially offensive remarks." A student does not, however, attend the university in order to be a walking dart board upon which others may cast abu- sive speech. Rather, it is the student's task to study and, if she chooses, to participate in extracurricular activities. Along the way, she may perhaps even like to eat her lunch unaccosted in a campus square. Although exposure to ideas she finds offensive may indeed be part of her university experience (as may her ability to propound ideas others consid- er offensive), she need not be left unprotected from personally assaultive speech in order to accomplish or even facili- tate that interchange of ideas. Furthermore, the counterargument that a student is not captive to some extent on campus because higher education is unnecessary to survival or to self-realization for other people, see id., misses the point. The university functions, to varying degrees, as a gatekeeper for entry to the professions, academia, and other societally influential and desirable positions. D. BOK, BEYOND THE IVORY TOWER 64 (1982). A student desiring those options, whether for reasons of renumeration or self-realization, has no choice but to attend the university. This rationale is perfectly consistent with the employment discrimination laws. Surely, Ann Hopkins, for example, could have gone somewhere else than Price Waterhouse to become a partner in an accounting firm or simply to earn her living. Nonetheless, her choice to seek a partnership in that accounting firm was protected. See Price Waterhouse v. Hopkins, 490 U.S. 228 (1988) (woman's title VII claim that accounting firm declined to make partnership decision for two years assumed cognizable). Similar- ly, Rosalie Tung could have pursued other career options besides that of university professor, but nonetheless she was protected from race and gender discrimination under title VII. See University of Penn. v. EEOC, 110 S. Ct. 577 (1990) (female professor's claim for race, gender, and national origin discrimination under title VII assumed cognizable). The choice of college students, participating in a necessary endeavor to achieve their own occupational and self-realization goals, should be similarly protected. Thus, for the same reason that a court might impose a duty on a state university to protect its students from abuse, the university can articulate an interest in protecting its students in order to justify an anti-slur regulation. Like an em- ployer who is held responsible for the abuse of one employee by another employee, the university stands in a posi- tion of responsibility vis-a-vis both victim and victimizer when both are affiliated with the institution. Workplace and university abuse are especially invidious because the victim has no choice, as a practical matter, but to work or to attend school. The "special relationship" doctrine clarifies the interest of a state university in protecting its students from personal- ly targeted abuse. Taken as a whole, the tort doctrine of intentional infliction of emotional distress provides a constitu- tionally permissible model for state university codes of conduct to prohibit personally abusive, face-to-face verbal at- tacks.

#### Confederate flag is constitutionally protected speech

**SeLegue:** SeLegue, Sean M. [B.A. 1988, University of California, Los Angeles; J.D. candidate 1991, Boalt Hall School of Law, University of California, Berkeley.] “Campus Anti-Slur Regulations: Speakers, Victims, and the First Amendment.” *California Law Review.* May 1991. RP

**The importance of targeting is even more clear in recent campus controversies regarding the flying of the Confederate flag or the use of other symbols of the Confederacy. At several campuses, many have objected to some fraternity houses' practice of flying that banner. To blacks, the flag represents advocacy of a return to slavery; to the whites flying it**, it represents their "Southern heritage." This dichotomy of understanding presents problems of intent and known susceptibility. Although the whites flying the flag in all likelihood know that the flag will offend African American passersby, they may lack the specific intent to harm any particular individual. **Moreover, targeting is entirely absent because offended viewers can easily avert their eyes. Speech has not been forced upon them.** This therefore does not constitute a situation in which the flag fliers could be punished under the principles offered in this Comment. If someone flies the offending flag without directing it at any particular person, then the civility zone of the passersby has not been invaded. Both these situations (burning the United States flag and flying the Confederate flag) raise the same essential ques- tion relevant to university anti-slur regulations: what limits are appropriate on symbolic communications that greatly upset some viewers. **The rule here should be no different than that which protects and regulates verbal expression. If the speaker targets the expression at an individual who she should know is particularly susceptible to being upset by the communications, then the university may punish the speaker in order to protect the hearer's civility zone and right to be left alone. If, however, the speaker merely stages the offensive symbol or act as a public display or protest and does not target particular individuals, then a state university may not, consonant with the first amendment, punish the expression.**

### Marcuse

#### Question of competing methods

**Marcuse:** Marcuse, Herbert. [German philosopher, Frankfurt School] “Repressive Tolerance.” 1965. RP

**The author is fully aware that, at present, no power, no authority, no government exists which would translate liberating tolerance into practice, but he believes that it is the task and duty of the intellectual to recall and preserve historical possibilities which seem to have become utopian possibilities--that it is his task to break the concreteness of oppression in order to open the mental space in which this society can be recognized as what it is and does.**

#### Unquestioning tolerance of any and all ideas leads us down the path to totalitarianism

**Marcuse:** Marcuse, Herbert. [German philosopher, Frankfurt School] “Repressive Tolerance.” 1965. RP

Tolerance is an end in itself. The elimination of violence, and the reduction of suppression to the extent required for protecting man and animals from cruelty and aggression are preconditions for the creation of a humane society. Such a society does not yet exist; progress toward it is perhaps more than before arrested by violence and suppression on a global scale. As deterrents against nuclear war, as police action against subversion, as technical aid in the fight against imperialism and communism, as methods of pacification in neo-colonial massacres, violence and suppression are promulgated, practiced, and defended by democratic and authoritarian governments alike, and the people subjected to these governments are educated to sustain such practices as necessary for the preservation of the status quo. **Tolerance is extended to policies, conditions, and modes of behavior which should not be tolerated because they are impeding, if not destroying, the chances of creating an existence without fear and misery. This sort of tolerance strengthens the tyranny of the majority against which authentic liberals protested**. The political locus of tolerance has changed: while it is more or less quietly and constitutionally withdrawn from the opposition, it is made compulsory behavior with respect to established policies. **Tolerance is turned from an active into a passive state, from practice to non-practice: laissez-faire the constituted authorities. It is the people who tolerate the government, which in turn tolerates opposition within the framework determined by the constituted authorities. Tolerance toward that which is radically evil now appears as good because it serves the cohesion of the whole on the road to affluence or more affluence.** The toleration of the systematic moronization of children and adults alike by publicity and propaganda, the release of destructiveness in aggressive driving, the recruitment for and training of special forces, the impotent and benevolent tolerance toward outright deception in merchandizing, waste, and planned obsolescence are not distortions and aberrations, they are the essence of a system which fosters tolerance as a means for perpetuating the struggle for existence and suppressing the alternatives. The authorities in education, morals, and psychology are vociferous against the increase in juvenile delinquency; they are less vociferous against the proud presentation, in word and deed and pictures, of ever more powerful missiles, rockets, bombs--the mature delinquency of a whole civilization. According to a dialectical proposition it is the whole which determines the truth--not in the sense that the whole is prior or superior to its parts, but in the sense that its structure and function determine every particular condition and relation. **Thus, within a repressive society, even progressive movements threaten to turn into their opposite to the degree to which they accept the rules of the game.** To take a most controversial case: the exercise of political rights (such as voting, letter-writing to the press, to Senators, etc., protest-demonstrations with a priori renunciation of counterviolence) in a society of total administration serves to strengthen this administration by testifying to the existence of democratic liberties which, in reality, have changed their content and lost their effectiveness. In such a case, freedom (of opinion, of assembly, of speech) becomes an instrument for absolving servitude. And yet (and only here the dialectical proposition shows its full intent) the existence. and practice of these liberties remain a precondition for the restoration of their original oppositional function, provided that the effort to transcend their (often self-imposed) limitations is intensified. Generally, the function and value of tolerance depend on the equality prevalent in the society in which tolerance is practiced. Tolerance itself stands subject to overriding criteria: its range and its limits cannot be defined in terms of the respective society. In other words, tolerance is an end in itself only when it is truly universal, practiced by the rulers as well as by the ruled, by the lords as well as by the peasants, by the sheriffs as well as by their victims. **And such universal tolerance is possible only when no real or alleged enemy requires in the national interest the education and training of people in military violence and destruction. As long as these conditions do not prevail, the conditions of tolerance are 'loaded': they are determined and defined by the institutionalized inequality (which is certainly compatible with constitutional equality), i.e., by the class structure of society. In such a society, tolerance is de facto limited on the dual ground of legalized violence or suppression (police, armed forces, guards of all sorts) and of the privileged position held by the predominant interests and their 'connections'.**

#### Free speech requires indiscriminate tolerance for all views.

**Marcuse:** Marcuse, Herbert. [German philosopher, Frankfurt School] “Repressive Tolerance.” 1965. RP

The tolerance which enlarged the range and content of freedom was always partisan-- intolerant toward the protagonists of the repressive status quo. The issue was only the degree and extent of intolerance. **In the firmly established liberal society of England and the United States, freedom of speech and assembly was granted even to the radical enemies of society, provided they did not make the transition from word to deed, from speech to action. Relying on the effective background limitations imposed by its class structure, the society seemed to practice general tolerance. But liberalist theory had already placed an important condition on tolerance** : it. was 'to apply only to human beings in the maturity of their faculties'. John Stuart Mill does not only speak of children and minors; he elaborates: 'Liberty, as a principle, has no application to any state of things anterior to the time when mankind have become capable of being improved by free and equal discussion.' Anterior to that time, men may still be barbarians, and 'despotism is a legitimate mode of government in dealing with barbarians, provided the end be their improvement, and the means justified by actually effecting that end.' Mill's often-quoted words have a less familiar implication on which their meaning depends: the internal connection between liberty and truth. There is a sense in which truth is the end of liberty, and liberty must be defined and confined by truth. Now in what sense can liberty be for the sake of truth? Liberty is self-determination, autonomy--this is almost a tautology, but a tautology which results from a whole series of synthetic judgments. It stipulates the ability to determine one's own life: to be able to determine what to do and what not to do, what to suffer and what not. But the subject of this autonomy is never the contingent, private individual as that which he actually is or happens to be; it is rather the individual as a human being who is capable of being free with the others. And the problem of making possible such a harmony between every individual liberty and the other is not that of finding a compromise between competitors, or between freedom and law, between general and individual interest, common and private welfare in an established society, but of creating the society in which man is no longer enslaved by institutions which vitiate self-determination from the beginning. In other words, freedom is still to be created even for the freest of the existing societies. And the direction in which it must be sought, and the institutional and cultural changes which may help to attain the goal are, at least in developed civilization, comprehensible, that is to say, they can be identified and projected, on the basis of experience, by human reason.

#### Indiscriminate tolerance props up oppressive ideas – ideas that are bad just move us further and further from liberation.

**Marcuse:** Marcuse, Herbert. [German philosopher, Frankfurt School] “Repressive Tolerance.” 1965. RP

In the interplay of theory and practice, true and false solutions become distinguishable-- never with the evidence of necessity, never as the positive, only with the certainty of a reasoned and reasonable chance, and with the persuasive force of the negative. For the true positive is the society of the future and therefore beyond definition arid determination, while the existing positive is that which must be surmounted. But the experience and understanding of the existent society may well be capable of identifying what is not conducive to a free and rational society, what impedes and distorts the possibilities of its creation. Freedom is liberation, a specific historical process in theory and practice, and as such it has its right and wrong, its truth and falsehood. **The uncertainty of chance in this distinction does not cancel the historical objectivity, but it necessitates freedom of thought and expression as preconditions of finding the way to freedom--it necessitates tolerance. However, this tolerance cannot be indiscriminate and equal with respect to the contents of expression, neither in word nor in deed; it cannot protect false words and wrong deeds which demonstrate that they contradict and counteract the' possibilities of liberation. Such indiscriminate tolerance is justified in harmless debates, in conversation, in academic discussion; it is indispensable in the scientific enterprise, in private religion. But society cannot be indiscriminate where the pacification of existence, where freedom and happiness themselves are at stake: here, certain things cannot be said, certain ideas cannot be expressed, certain policies cannot be proposed, certain behavior cannot be permitted without making tolerance an instrument for the continuation of servitude.**

#### There is an objective truth

**Marcuse:** Marcuse, Herbert. [German philosopher, Frankfurt School] “Repressive Tolerance.” 1965. RP

**Tolerance of free speech is the way of improvement, of progress in liberation, not because there is no objective truth, and improvement must necessarily be a compromise between a variety of opinions, but because there is an objective truth which can be discovered, ascertained only in learning and comprehending that which is and that which can be and ought to be done for the sake of improving the lot of mankind**. This common and historical 'ought' is not immediately evident, at hand: it has to be uncovered by 'cutting through', 'splitting', 'breaking asunder' (dis-cutio) the given material--separating right and wrong, good and bad, correct and incorrect. The subject whose 'improvement' depends on a progressive historical practice is each man as man, and this universality is reflected in that of the discussion, which a priori does not exclude any group or individual. **But even the all-inclusive character of liberalist tolerance was, at least in theory, based on the proposition that men were (potential) individuals who could learn to hear and see and feel by themselves, to develop their own thoughts, to grasp their true interests and rights and capabilities, also against established authority and opinion. This was the rationale of free speech and assembly. Universal toleration becomes questionable when its rationale no longer prevails, when tolerance is administered to manipulated and indoctrinated individuals who parrot, as their own, the opinion of their masters, for whom heteronomy has become autonomy.**

#### The Aff’s notion of constitutionally protected speech demands tolerance

**Marcuse:** Marcuse, Herbert. [German philosopher, Frankfurt School] “Repressive Tolerance.” 1965. RP

**Under a system of constitutionally guaranteed and (generally and without too many and too glaring exceptions) practiced civil rights and liberties, opposition and dissent are tolerated unless they issue in violence and/or in exhortation to and organization of violent subversion. The underlying assumption is that the established society is free, and that any improvement, even a change in the social structure and social values, would come about in the normal course of events, prepared, defined, and tested in free and equal discussion, on the open marketplace of ideas and goods**.[2] Now in recalling John Stuart Mill's passage, I drew attention to the premise hidden in this assumption: free and equal discussion can fulfill the function attributed to it only if it is rational expression and development of independent thinking, free from indoctrination, manipulation, extraneous authority. The notion of pluralism and countervailing powers is no substitute for this requirement. One might in theory construct a state in which a multitude of different pressures, interests, and authorities balance each other out and result in a truly general and rational interest. **However, such a construction badly fits a society in which powers are and remain unequal and even increase their unequal weight when they run their own course**. It fits even worse when the variety of pressures unifies and coagulates into an overwhelming whole, integrating the particular countervailing powers by virtue of an increasing standard of living and an increasing concentration of power. Then, the laborer, whose real interest conflicts with that of management, the common consumer whose real interest conflicts with that of the producer, the intellectual whose vocation conflicts with that of his employer find themselves submitting to a system against which they are powerless and appear unreasonable. The idea of the available alternatives evaporates into an utterly utopian dimension in which it is at home, for a free society is indeed unrealistically and undefinably different from the existing ones. Under these circumstances, whatever improvement may occur 'in the normal course of events' and without subversion is likely to be an improvement in the direction determined by the particular interests which control the whole.

#### Dominant viewpoints always prevail in the free market when we take a hands off approach.

**Marcuse:** Marcuse, Herbert. [German philosopher, Frankfurt School] “Repressive Tolerance.” 1965. RP

**By the same token, those minorities which strive for a change of the whole itself will, under optimal conditions which rarely prevail, will be left free to deliberate and discuss, to speak and to assemble - and will be left harmless and helpless in the face of the overwhelming majority, which militates against qualitative social change. This majority is firmly grounded in the increasing satisfaction of needs, and technological and -mental co-ordination, which testify to the general helplessness of radical groups in a well-functioning social system**. Within the affluent democracy, the affluent discussion prevails, and within the established framework, it is tolerant to a large extent. All points of view can be heard: the Communist and the Fascist, the Left and the Right, the white and the Negro, the crusaders for armament and for disarmament. Moreover, in endlessly dragging debates over the media, the stupid opinion is treated with the same respect as the intelligent one, the misinformed may talk as long as the informed, and propaganda rides along with education, truth with falsehood. **This pure toleration of sense and nonsense is justified by the democratic argument that nobody, neither group nor individual, is in possession of the truth and capable of defining what is right and wrong, good and bad.** Therefore, all contesting opinions must be submitted to 'the people' for its deliberation and choice. But I have already suggested that the democratic argument implies a necessary condition, namely, that the people must be capable of deliberating and choosing on the basis of knowledge, that they must have access to authentic information, and that, on this. basis, their evaluation must be the result of autonomous thought.

#### DEMOCRACY IS BROKEN – a supposed “equal playing field” is an excuse to privilege dominant hegemonic viewpoints under the guise of “tolerance”

**Marcuse:** Marcuse, Herbert. [German philosopher, Frankfurt School] “Repressive Tolerance.” 1965. RP

**In the contemporary period, the democratic argument for abstract tolerance tends to be invalidated by the invalidation of the democratic process itself**. The liberating force of democracy was the chance it gave to effective dissent, on the individual as well as social scale, its openness to qualitatively different forms of government, of culture, education, work--of the human existence in general. The toleration of free discussion and the equal right of opposites was to define and clarify the different forms of dissent: their direction, content, prospect. **But with the concentration of economic and political power and the integration of opposites in a society which uses technology as an instrument of domination, effective dissent is blocked where it could freely emerge; in the formation of opinion, in information and communication, in speech and assembly. Under the rule of monopolistic media--themselves the mere instruments of economic and political power--a mentality is created for which right and wrong, true and false are predefined wherever they affect the vital interests of the society**. This is, prior to all expression and communication, a matter of semantics: the blocking of effective dissent, of the recognition of that which is not of the Establishment which begins in the language that is publicized and administered. The meaning of words is rigidly stabilized. Rational persuasion, persuasion to the opposite is all but precluded. The avenues of entrance are closed to the meaning of words and ideas other than the established one--established by the publicity of the powers that be, and verified in their practices. Other words can be spoken and heard, other ideas can be expressed, but, at the massive scale of the conservative majority (outside such enclaves as the intelligentsia), they are immediately 'evaluated' (i.e. automatically understood) in terms of the public language--a language which determines 'a priori' the direction in which the thought process moves. Thus the process of reflection ends where it started: in the given conditions and relations. Self-validating, the argument. of the discussion repels the contradiction because the antithesis is redefined in terms of the thesis. For example, thesis: we work for peace; antithesis: we prepare for war (or even: we wage war); unification of opposites; preparing for war is working for peace. Peace is redefined as necessarily, in the prevailing situation, including preparation for war (or even war) and in this Orwellian form, the meaning of the word 'peace' is stabilized. Thus, the basic vocabulary of the Orwellian language operates as a priori categories of understanding: preforming all content. These conditions invalidate the logic of tolerance which involves the rational development of meaning and precludes the 'closing of meaning. Consequently, persuasion through discussion and the equal presentation of opposites (even where it is really, equal) easily lose their liberating force as factors of understanding and learning; they are far more likely to strengthen the established thesis and to repel the alternatives. Impartiality to the utmost, equal treatment of competing and conflicting issues is indeed a basic requirement for decision-making in the democratic process--it is an equally basic requirement for defining the limits of tolerance. But in a democracy with totalitarian organization, objectivity may fulfill a very different function, namely, to foster a mental attitude which tends to obliterate the difference between true and false, information and indoctrination, right and wrong. In fact, the decision between opposed opinions has been made before the presentation and discussion get under way--made, not by a conspiracy or a sponsor or a publisher, not by any dictatorship, but rather by the 'normal course of events', which is the course of administered events, and by the mentality shaped in this course. Here, too, it is the whole which determines the truth. Then the decision asserts itself, without any open violation of objectivity, in such things as the make-up of a newspaper (with the breaking up of vital information into bits interspersed between extraneous material, irrelevant items, relegating of some radically negative news to an obscure place), in the juxtaposition of gorgeous ads with unmitigated horrors, in the introduction and interruption of the broadcasting of facts by overwhelming commercials. The result is a neutralization of opposites, a neutralization, however, which takes place on the firm grounds of the structural limitation of tolerance and within a preformed mentality. **When a magazine prints side by side a negative and a positive report on the FBI, it fulfills honestly the requirements of objectivity: however, the chances are that the positive wins because the image of the institution is deeply engraved in the mind of the people. Or, if a newscaster reports the torture and murder of civil rights workers in the same unemotional tone he uses to describe the stockmarket or the weather, or with the same great emotion with which he says his commercials, then such objectivity is spurious--more, it offends against humanity and truth by being calm where one should be enraged, by refraining from accusation where accusation is in the facts themselves. The tolerance expressed in such impartiality serves to minimize or even absolve prevailing intolerance and suppression**. If objectivity has anything to do with truth, and if truth is more than a matter of logic and science, then this kind of objectivity is false, and this kind of tolerance inhuman. And if it is necessary to break the established universe of meaning (and the practice enclosed in this universe) in order to enable man to find out what is true and false, this deceptive impartiality would have to be abandoned. The people exposed to this impartiality are no tabulae rasae, they are indoctrinated by the conditions under which they live and think and which they do not transcend. To enable them to become autonomous, to find by themselves what is true and what is false for man in the existing society, they would have to be freed from the prevailing indoctrination (which is no longer recognized as indoctrination). But this means that the trend would have to be reversed: they would have to get information slanted in the opposite direction. For the facts are never given immediately and never accessible immediately; they are established, 'mediated' by those who made them; the truth, 'the whole truth' surpasses these facts and requires the rupture with their appearance. This rupture--prerequisite and token of all freedom of thought and of speech--cannot be accomplished within the established framework of abstract tolerance and spurious objectivity because these are precisely the factors which precondition the mind against the rupture. The factual barriers which totalitarian democracy erects against the efficacy of qualitative dissent are weak and pleasant enough compared with the practices of a dictatorship which claims to educate the people in the truth. With all its limitations and distortions, democratic tolerance is under all circumstances more humane than an institutionalized intolerance which sacrifices the rights and liberties of the living generations for the sake of future generations. The question is whether this is the only alternative. I shall presently try to suggest the direction in which an answer may be sought In any case, the contrast is not between democracy in the abstract and dictatorship in the abstract. Democracy is a form of government which fits very different types of society (this holds true even for a democracy with universal suffrage and equality before the law), and the human costs of a democracy are always and everywhere those exacted by the society whose government it is. Their range extends all the way from normal exploitation, poverty, and insecurity to the victims of wars, police actions, military aid, etc., in which the society is engaged--and not only to the victims within its own frontiers. These considerations can never justify the exacting of different sacrifices and different victims on behalf of a future better society, but they do allow weighing the costs involved in the perpetuation of an existing society against the risk of promoting alternatives which offer a reasonable chance of pacification and liberation. Surely, no government can be expected to foster its own subversion, but in a democracy such a right is vested in the people (i.e. in the majority of the people). **This means that the ways should not be blocked on which a subversive majority could develop, and if they are blocked by organized repression and indoctrination, their reopening may require apparently undemocratic means. They would include the withdrawal of toleration of speech and assembly from groups and movements which promote aggressive policies, armament, chauvinism, discrimination on the grounds of race and religion, or which oppose the extension of public services, social security, medical care, etc.** Moreover, the restoration of freedom of thought may necessitate new and rigid restrictions on teachings and practices in the educational institutions which, by their very methods and concepts, serve to enclose the mind within the established universe of discourse and behavior--thereby precluding a priori a rational evaluation of the alternatives. And to the degree to which freedom of thought involves the struggle against inhumanity, restoration of such freedom would also imply intolerance toward scientific research in the interest of deadly 'deterrents', of abnormal human endurance under inhuman conditions, etc. I shall presently discuss the question as to who is to decide on the distinction between liberating and repressive, human and inhuman teachings and practices; I have already suggested that this distinction is not a matter of value-preference but of rational criteria.

#### Society is at a breaking point – withdrawal of tolerance is key to shut down fascists before they start.

**Marcuse:** Marcuse, Herbert. [German philosopher, Frankfurt School] “Repressive Tolerance.” 1965. RP

**Liberating tolerance, then, would mean intolerance against movements from the Right and toleration of movements from the Left**. As to the scope of this tolerance and intolerance: ... it would extend to the stage of action as well as of discussion and propaganda, of deed as well as of word. **The traditional criterion of clear and present danger seems no longer adequate to a stage** where the whole society is in the situation of the theater audience when somebody cries: 'fire'. **It is a situation in which the total catastrophe could be triggered off any moment, not only by a technical error, but also by a rational miscalculation of risks, or by a rash speech of one of the leaders.** In past and different circumstances, the speeches of the Fascist and Nazi leaders were the immediate prologue to the massacre. **The distance between the propaganda and the action, between the organization and its release on the people had become too short. But the spreading of the word could have been stopped before it was too late: if democratic tolerance had been withdrawn when the future leaders started their campaign, mankind would have had a chance of avoiding Auschwitz and a World War**. The whole post-fascist period is one of clear and present danger. Consequently, true pacification requires the withdrawal of tolerance before the deed, at the stage of communication in word, print, and picture. Such extreme suspension of the right of free speech and free assembly is indeed justified only if the whole of society is in extreme danger. I maintain that our society is in such an emergency situation, and that it has become the normal state of affairs. Different opinions and 'philosophies' can no longer compete peacefully for adherence and persuasion on rational grounds: the 'marketplace of ideas' is organized and delimited by those who determine the national and the individual interest. In this society, for which the ideologists have proclaimed the 'end of ideology', the false consciousness has become the general consciousness--from the government down to its last objects. The small and powerless minorities which struggle against the false consciousness and its beneficiaries must be helped: their continued existence is more important than the preservation of abused rights and liberties which grant constitutional powers to those who oppress these minorities. It should be evident by now that the exercise of civil rights by those who don't have them presupposes the withdrawal of civil rights from those who prevent their exercise, and that liberation of the Damned of the Earth presupposes suppression not only of their old but also of their new masters. Withdrawal of tolerance from regressive movements before they can become active; intolerance even toward thought, opinion, and word, and finally, intolerance in the opposite direction, that is, toward the self-styled conservatives, to the political Right--these anti- democratic notions respond to the actual development of the democratic society which has destroyed the basis for universal tolerance. The conditions under which tolerance can again become a liberating and humanizing force have still to be created. When tolerance mainly serves the protection and preservation of a repressive society, when it serves to neutralize opposition and to render men immune against other and better forms of life, then tolerance has been perverted. And when this perversion starts in the mind of the individual, in his consciousness, his needs, when heteronomous interests occupy him before he can experience his servitude, then the efforts to counteract his dehumanization must begin at the place of entrance, there where the false consciousness takes form (or rather: is systematically formed)-- it must begin with stopping the words and images which feed this consciousness. **To be sure, this is censorship, even precensorship, but openly directed against the more or less hidden censorship that permeates the free media**. Where the false consciousness has become prevalent in national and popular behavior, it translates itself almost immediately into practice: the safe distance between ideology and reality, repressive thought and repressive action, between the word of destruction and the deed of destruction is dangerously shortened. Thus, the break through the false consciousness may provide the Archimedean point for a larger emancipation- -at an infinitesimally small spot, to be sure, but it is on the enlargement of such small spots that the chance of change depends.

#### EDUCATION IS NEVER NEUTRAL – people have to take a stance one way or the other, so censoring is *inevitable*

**Marcuse:** Marcuse, Herbert. [German philosopher, Frankfurt School] “Repressive Tolerance.” 1965. RP

**This means that previously neutral, value-free, formal aspects of learning and teaching now become, on their own grounds and in their own right, political: learning to know the facts, the whole truth, and to comprehend it is radical criticism throughout, intellectual subversion**. In a world in which the human faculties and needs are arrested or perverted, autonomous thinking leads into a 'perverted world': contradiction and counter-image of the established world of repression. And this contradiction is not simply stipulated, is not simply the product of confused thinking or fantasy, but is the logical development of the given, the existing world. To the degree to which this development is actually impeded by the sheer weight of a repressive society and the necessity of making a living in. it, repression invades the academic enterprise itself, even prior to all restrictions on academic freedom. The pre-empting of the mind vitiates impartiality and objectivity: unless the student learns to think in the opposite direction, he will be inclined to place the facts into the predominant framework of values. Scholarship, i.e., the acquisition and communication of knowledge, prohibits the purification and isolation of facts from the context of the whole truth. An essential part of the latter is recognition of the frightening extent to which history is made and recorded by and for the victors, that is, the extent to which history was the development of oppression. And this oppression is in the facts themselves which it establishes; thus they themselves carry a negative value as part and aspect of their facticity. To treat the great crusades against humanity (like that against the Albigensians) with the same impartiality as the desperate struggles for humanity means neutralizing their opposite historical function, reconciling the executioners with their victims, distorting the record. Such spurious neutrality serves to reproduce acceptance of the dominion of the victors in the consciousness of man. Here, too, in the education of those who are not yet maturely integrated, in the mind of the young, the ground for liberating tolerance is still to be created. **Education offers still another example of spurious, abstract tolerance in the guise of concreteness and truth: it is epitomized in the concept of self-actualization. From the permissiveness of all sorts of license to the child, to the constant psychological concern with the personal problems of the student, a large-scale movement is under way against the evils of repression and the need for being oneself. Frequently brushed aside is the question as to what has to be repressed before one can be a self, oneself**. The individual potential is first a negative one, a portion of the potential of his society: of aggression, guilt feeling, ignorance, resentment, cruelty which vitiate his life instincts. If the identity of the self is to be more than the immediate realization of this potential (undesirable for the individual as a human being), then it requires repression and sublimation, conscious transformation. This process involves at each stage (to use the ridiculed terms which here reveal their succinct concreteness) the negation of the negation, mediation of the immediate, and identity is no more and no less than this process. 'Alienation' is the constant and essential element of identity, the objective side of the subject--and not, as it is made to appear today, a disease, a psychological condition. Freud well knew the difference between progressive and regressive, liberating and destructive repression. The publicity of self-actualization promotes the removal of the one and the other, it promotes existence in that immediacy which, in a repressive society, is (to use another Hegelian term) bad immediacy (schlechte Unmittelbarkeit). It isolates the individual from the one dimension where he could 'find himself': from his political existence, which is at the core of his entire existence. Instead, it encourages non-conformity and letting-go in ways which leave the real engines of repression in the society entirely intact, which even strengthen these engines by substituting the satisfactions of private, and personal rebellion for a more than private and personal, and therefore more authentic, opposition. The desublimation involved in this sort of self-actualization is itself repressive inasmuch as it weakens the necessity and the power of the intellect, the catalytic force of that unhappy consciousness which does not revel in the archetypal personal release of frustration - hopeless resurgence of the Id which will sooner or later succumb to the omnipresent rationality of the administered world - but which recognizes the horror of the whole in the most private frustration and actualizes itself in this recognition.

#### Liberal democracy has been tried and failed – neutrality towards the Right has accomplished nothing – the alt is key to a radical agenda

**Marcuse:** Marcuse, Herbert. [German philosopher, Frankfurt School] “Repressive Tolerance.” 1965. RP

**UNDER the conditions prevailing in this country, tolerance does not, and cannot, fulfill the civilizing function attributed to it by the liberal protagonists of democracy, namely, protection of dissent.** The progressive historical force of tolerance lies in its extension to those modes and forms of dissent which are not committed to the status quo of society, and not confined to the institutional framework of the established society. **Consequently, the idea of tolerance implies the necessity, for the dissenting group or individuals, to become illegitimate if and when the established legitimacy prevents and counteracts the development of dissent**. This would be the case not only in a totalitarian society, under a dictatorship, in one-party states, but also in a democracy (representative, parliamentary, or 'direct') where the majority does not result from the development of independent thought and opinion but rather from the monopolistic or oligopolistic administration of public opinion, without terror and (normally) without censorship. **In such cases, the majority is self-perpetuating while perpetuating the vested interests which made it a majority**. In its very structure this majority is 'closed', petrified; it repels a priori any change other than changes within the system. But this means that the majority is no longer justified in claiming the democratic title of the best guardian of the common interest. And such a majority is all but the opposite of Rousseau's 'general will': it is composed, not of individuals who, in their political functions, have made effective 'abstraction' from their private interests, but, on the contrary, of individuals who have effectively identified their private. interests with their political functions. And the representatives of this majority, in ascertaining and executing its will, ascertain and execute the will of the vested interests, which have formed the majority. The ideology of democracy hides its lack of substance. **In the United States, this tendency goes hand in hand with the monopolistic or oligopolistic concentration of capital in the formation of public opinion, i.e., of the majority**. The chance of influencing, in any effective way, this majority is at a price, in dollars, totally out of reach of the radical opposition. Here too, free competition and exchange of ideas have become a farce. **The Left has no equal voice, no equal access to the mass media and their public facilities - not because a conspiracy excludes it, but because, in good old capitalist fashion, it does not have the required purchasing power**. And the Left does not have the purchasing power because it is the Left. These conditions impose upon the radical minorities a strategy which is in essence a refusal to allow the continuous functioning of allegedly indiscriminate but in fact discriminate tolerance, for example, a strategy of protesting against the alternate matching of a spokesman for the Right (or Center) with one for the Left. Not 'equal' but more representation of the Left would be equalization of the prevailing inequality. **Within the solid framework of pre-established inequality and power, tolerance is practiced indeed.** Even outrageous opinions are expressed, outrageous incidents are televised; and the critics of established policies are interrupted by the same number of commercials as the conservative advocates. Are these interludes supposed to counteract the sheer weight, magnitude, and continuity of system-publicity, indoctrination which operates playfully through the endless commercials as well as through the entertainment? **Given this situation, I suggested in 'Repressive Tolerance' the practice of discriminating tolerance in an inverse direction, as a means of shifting the balance between Right and Left by restraining the liberty of the Right, thus counteracting the pervasive inequality of freedom (unequal opportunity of access to the means of democratic persuasion) and strengthening the oppressed against the oppressed. Tolerance would be restricted with respect to movements of a demonstrably aggressive or destructive character (destructive of the prospects for peace, justice, and freedom for all). Such discrimination would also be applied to movements opposing the extension of social legislation to the poor, weak, disabled**. As against the virulent denunciations that such a policy would do away with the sacred liberalistic principle of equality for 'the other side', I maintain that there are issues where either there is no 'other side' in any more than a formalistic sense, or where 'the other side' is demonstrably 'regressive' and impedes possible improvement of the human condition. To **tolerate propaganda for inhumanity vitiates the goals not only of liberalism but of every progressive political philosophy**. If the choice were between genuine democracy and dictatorship, democracy would certainly be preferable. But democracy does not prevail. **The radical critics of the existing political process are thus readily denounced as advocating an 'elitism', a dictatorship of intellectuals as an alternative.** What we have in fact is government, representative government by a non- intellectual minority of politicians, generals, and businessmen. The record of this 'elite' is not very promising, and political prerogatives for the intelligentsia may not necessarily be worse for the society as a whole.

### Epstein [athlete plan]

#### Monitoring is key to stop hazing

**Epstein:** Epstein, Timothy Liam [Timothy Liam Epstein is a partner and chairman of the Sports Law Practice Group at Smith Amundsen LLC. He also serves as an Adjunct Professor of Law at Loyola University Chicago School of Law, teaching courses in sports and entertainment law. His sports law practice is all encompassing, but focuses on the litigation needs of players, coaches, teams and schools.] “REGULATION OF STUDENT-ATHLETES’ SOCIAL MEDIA USE: A GUIDE TO AVOIDING NCAA SANCTIONS AND RELATED LITIGATION.” Mississippi Sports Law Review. 2012. RP

**Monitoring social media can also help police disciplinary problems such as hazing. In 2006, the entire Catholic University Women’s Lacrosse Team was suspended after photographs depicting hazing were posted on Facebook. The same year, the Northwestern Women’s soccer team suffered the same fate.** **The University of Kentucky has used social media sites to convict students of alcohol-related violations. It was the famous tweet by UNC’s Marvin Austin that spurred the NCAA’s investigation into the plethora of academic and amateurism violations by the UNC football team**. Given the prevalent role of social media in the lives of college students, manifestation of transgressions by student- athletes is inevitable.

#### Bans on hate speech violate constitution [competition arg]

**Epstein:** Epstein, Timothy Liam [Timothy Liam Epstein is a partner and chairman of the Sports Law Practice Group at Smith Amundsen LLC. He also serves as an Adjunct Professor of Law at Loyola University Chicago School of Law, teaching courses in sports and entertainment law. His sports law practice is all encompassing, but focuses on the litigation needs of players, coaches, teams and schools.] “REGULATION OF STUDENT-ATHLETES’ SOCIAL MEDIA USE: A GUIDE TO AVOIDING NCAA SANCTIONS AND RELATED LITIGATION.” Mississippi Sports Law Review. 2012. RP

**Should a university allow student-athletes to use social media, but punish certain speech based on its content, the constitutional analysis is different, but no less troubling for universities.** Starting with the Supreme Court’s decision in Healy, the nation’s courts have consistently declined to treat public university students the same as secondary and elementary school students for First Amendment purposes. In a long line of cases, starting with Tinker v. Des Moines, the Supreme Court has held that secondary or elementary schools may limit or discipline student expression if officials reasonably conclude that it will materially and substantially disrupt the work and discipline of the school.64 Courts have cited the “special needs of school discipline” as an important consideration in regulating speech in public elementary and high schools, and have upheld sanctions for “inappropriate speech” on the grounds that permitting such speech would “undermine the school’s basic educational mission.” By contrast, as the Supreme Court in Healy explained, “the precedent of this Court leaves no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” As one court noted in analyzing the constitutionality of a university anti-harassment speech code, although “[s]peech codes are disfavored under the First Amendment because of their tendency to silence or interfere with protected speech...[,] public secondary and elementary school administrators are granted more leeway [to restrict speech] than public colleges and universities...” **Public colleges and universities are capable of restricting student speech, but under Tinker, the university would bear the burden of showing a constitutionally valid reason for regulating speech beyond “a mere desire to avoid...discomfort and unpleasantness.” The free speech clause protects a wide variety of speech that listeners may consider deeply offensive, including statements that impugn another’s race or national origin or that denigrate religious beliefs**. Moreover, a school must show that speech will cause actual, material disruption before prohibiting it. It is clear from the foregoing that a public university faces significant legal hurdles in attempting to punish speech based on its content through a social media policy. To be sure, a number of public universities have seen their speech-restrictive policies challenged in federal court, the majority of which have been struck down as unconstitutional. The main argument against the university defendants is that the restrictive policies at universities are overbroad on the basis that the proscription of unprotected speech also proscribes protected speech. Although the Supreme Court has not resolved student free speech cases on the basis of the overbreadth doctrine, the Court has stated that the overbreadth doctrine may be appropriately utilized in the school setting.

### Solomon [athlete plan]

#### Explanation of 3rd party monitoring of athlete social media – this restricts free speech

**Solomon:** Solomon, Jon [Jon is a former enterprise reporter for The Birmingham News.] “What to do about social media? Colleges tackle how to monitor what athletes are saying.” July 2011. RP

**Last fall, Mississippi State became Centrix Social's pilot program to monitor what athletes post on Facebook and Twitter. Ray said the company is very close to adding another SEC school. Since the North Carolina failure to monitor charge, "we've finally gotten a lot of return calls," Ray said. "The reaction I see from people is, 'What does the NCAA expect us to do?'" Centrix Social isn't the only program tracking social networks of college athletes. UDiligence has emerged as a leading company, listing as clients Florida, Ole Miss, Baylor, Missouri, Nebraska, Texas A&M, Louisville, Memphis, Texas and Texas Tech. At Centrix Social, the company preloads the rosters of a school's teams. The software attempts to locate the social media identities, at which point it's up to the athletics department's policies on how to follow athletes. A list of 300 to 400 words is provided by Centrix Social to red-flag words. These words can be customized by a school, such as drug terms, gang phrases or people's names. At Mississippi State, some words being tracked include "murder," "fight," "bet," "alcohol," "benjamins," "crunk," "rape," and "robbery." Centrix Social also monitors around 200 names of sports agents for Mississippi State. When there's a hit on a key word, Centrix Social generates e-mail warnings to the compliance department as well as any coaches who want to be notified. The program costs under $10,000 a year**. "With the communication tools kids have now, I think the universities almost have an obligation to monitor these and use it as life- lesson opportunities," McGilberry said. "The more you know about what's going on in a player's life, the more opportunities you have where you can effect change." Arkansas is one SEC school that doesn't use a monitoring program, although compliance director Jon Fagg said that doesn't preclude the school from changing. "Our attitude is all that does is tell us something fast," Fagg said. "We already know really, really fast anyway. Between the public, traditional media or our staff, we're going to find out pretty quickly." Because of his role on the NCAA infractions committee, Sankey declined to say whether he believes software programs are necessary to satisfy the NCAA. North Carolina appears before the NCAA on its charges this fall. "Certainly any time you can have a piece of software that can pay attention, that's good," Sankey said. Murphy, a lawyer who works with Centrix Social, said simply banning athletes from social media could present two problems: Restricting free speech and failing to convince the NCAA that the ban constitutes monitoring. "I have a hard time believing the NCAA would see a ban as a sufficient way to monitor because intuitively, most people believe that won't work," Murphy said. "Most people know social media is not going anywhere. It has now matured as primary communication tools in our culture, and young people are using them for everything." Whatever a university decides, Buckner -- the NCAA legal expert from Florida -- believes schools need a policy on when athletes can be on social media and what language can be used. "**To me, it would be permissible for a university to limit language that might be offensive, that might cause harm to somebody else or may violate NCAA rules," Buckner said. "But First Amendment rights have to be mixed in with academic freedom on campuses. That's why this needs to be a university conversation."**

### Miller [athlete plan]

#### Uncontrolled Tweets create public relations problems

**Miller:** Miller, Katelyn P. [The Impact of Social Media on Intercollegiate Athletics] *Rutgers Capstone Program.* January 2016. RP

**Social media technologies are noticeable participants in the world of sports. These technologies may even be looked upon as visible competitors. One such platform that has created a number of issues for intercollegiate athletic programs is Twitter. Through individual tweets, student-athletes have triggered public relation problems that the university and athletic department now have to deal with it. More people have to get involved in order for the comments and posts on the internet to disappear or be reworked for a more positive public following (Sanderson, 2013). In response to the presence of social media, athletic departments have created and implemented different strategies in order to deal with potential fallouts on social media sites.** These strategies range from constructing social media policies to making connections with third party businesses just to monitor student-athletes social media content. Despite all of the work athletic departments have done in trying to stop the misuse of social media, student-athletes continue to tweet, post and Instagram inappropriate content that can generate negative or positive public relations issues (Sanderson, 2013).

#### Plan isn’t structurally inherent – there are very few regulations on student speech – none that the advantage talks about

**Miller:** Miller, Katelyn P. [The Impact of Social Media on Intercollegiate Athletics] *Rutgers Capstone Program.* January 2016. RP

-No existing NCAA regs

-Don’t read this with the funding args

With the inclusion of social media platforms by the National Collegiate Athletic Association (NCAA), policies continue to develop in an attempt to conquer particular goals of the association (Sanderson, 2015). This in part is due to the association’s agenda to encourage institutions to take a leadership role in educating their constituents on the proper use of social media outlets. **However, there are many challenges faced by the NCAA in determining violations and infractions based on social media conduct because the NCAA rulebook has little to say about the topic. These social media platforms are not even mentioned in the NCAA by-laws. The only official time the NCAA regulates the use of social media is during the recruitment process. In regards to communication, the only thing included in the by-laws pertains to how a coach can go about recruiting a potential student-athlete by means of social media.** It states, “electronically transmitted correspondence that may be sent to a prospective student-athlete or the prospective student-athlete’s parents or legal guardians is limited to electronic mail and facsimiles” (Parkinson, 2011, p 53). However, all other forms of electronically transmitted communication including instant messenger and text messaging are not supported sanctions of the associations established policy. **This is interesting because at a time when social media is one of the main forms of communication for student-athletes, one would think a policy with defined guidelines would be readily available** (Parkinson, 2011). In its simplest form, a policy could limit infractions faced by coaches, potential players, current players and athletic administration.

#### Schools that don’t regulate student speech could be sanctioned

**Miller:** Miller, Katelyn P. [The Impact of Social Media on Intercollegiate Athletics] *Rutgers Capstone Program.* January 2016. RP

With regard to social media and student-athletes, academic institutions and athletic departments may choose to be ambiguous in order to maintain control considering all of the obstacles one might face when creating policy (Sanderson, 2013). Institutions also have had amble time to reflect on all of the sanctions and violations that have occurred to take into consideration when creating a policy of their own. **There have been a select number of institutions who have chosen to take a hands-off approach to student-athletes’ social media use despite all of the recommendations set forth by the NCAA. Pennsylvania State University is one such school that has chosen to not follow the suggestions set forth by the NCAA**. The university chooses to not monitor its students’ social media accounts as well as its athletes and coaches. **An official from the university even stated that if people make the decision to post a comment about the institution or about whatever they so choose, then they have to know they will be accountable for it individually**. He also continued to comment on how the coaching administration duties did not include parental responsibilities. **In this universities’ instance, the refusal to presume the task of monitoring student-athlete activity can realistically be the most legally sound approach, but it is in direct opposition to the NCAA’s recommendations. It could also leave the school vulnerable to sanctions, which in turn could be equally detrimental** (Epstein, 2012). In the language of certain social media policies at specific institutions, research has found that many institutions depicted social media as dangerous and correlated its use with risk (Sanderson, 2015). Yet policies lacked any information or insight into how social media could be constructively and positively used by student-athletes (Sanderson, 2015). Thus the expectations of administrations in regards to student-athletes use of social media have to be low considering there is very little information illustrating how to act appropriately over the Internet. These matters need to be met head on with language depicting the proper course of action.

#### The Aff leads to massive funding cuts – schools that don’t monitor social media won’t notice potential liabilities

**Miller:** Miller, Katelyn P. [The Impact of Social Media on Intercollegiate Athletics] *Rutgers Capstone Program.* January 2016. RP

-Amateurism allegations

-Independent of literal cuts, loss in credibility from lawsuits

-Perceptions relevant

**There are many consequences that have been made public as a result of the misuse of social media by student-athletes. The consequences can stretch as far as the loss of a scholarship and as small as game suspension (Bradley, 2011). Either way, student-athletes are reaping repercussions as a result of the misuse of social media. The University of North Carolina experienced the repercussions in a way no other institution has ever had before because for the first time the NCAA combined social networking in with the allegations. UNC received a Notice of Allegations from the National Collegiate Athletic Association (NCAA) that connected several of its football players’ to receiving benefits,** which in turn made them vulnerable to a violation of NCAA amateurism by- laws. **What separates the UNC scandal from others is the fact that as part of the allegations that were made against UNC, the NCAA included the following; “In February through June 201, UNC did not adequately and consistently monitor social networking activity that visibly illustrated potential amateurism violations within the football program, which delayed the institutions discovery and compounded the provision of impermissible benefits” (Epstein, 2012, p 2). In the case of UNC, one student-athlete’s comments on Twitter became an essential part of the NCAA’s case due to the content of the posted information**. The individual bragged of being at a club with an agent while making other remarks that visibly revealed violations of the NJCAA’s amateurism rules (Epstein, 2012). This made the NCAA’s enforcement team’s job much easier to build their case because the evidence was spread over the Internet. **This case further illustrates to other institutions that** a mere tweet, Facebook post or Instagram picture, could serve as the main source for a school losing millions of dollars**. It could also go as far as dragging the institutions reputation through the press. Even if, in the end, the NCAA may find fault where nothing has been done to avoid such an occurrence, the damage will have already been done**

#### Their social media is used to disparage minorities instead of productively

**Miller:** Miller, Katelyn P. [The Impact of Social Media on Intercollegiate Athletics] *Rutgers Capstone Program.* January 2016. RP

**Student-athletes need to be very aware of what they put out there on the Internet**. Anyone can create trouble with a single comment, picture or online conversation that covers much more than an athlete vying for a scholarship. For instance, players voicing their opinions about playing time or the coaching staff, squabbling with a teammate or trash-talking an opponent have pushed coaches in the direction of becoming more observant and attentive to their players’ online activity. One can never be too cautious, especially in the current climate of the online world. Brandon Chambers, an assistant men’s basketball coach at Marymount College conveyed the message of never allowing an online post to cost a student-athlete the opportunity for a scholarship to school (DiVeronica, 2014). This is very sound advice for any potential or current student-athlete to take. **For example, in 2014, Kent State University issued the suspension of a student- athlete from one of their programs after learning of his online comments about his feelings on the media’s coverage about the first openly gay football player, Michael Sam. This is a great depiction of how an individual should have really thought about what they were sending before putting it out there for the world to see and criticize. The university and the student-athlete received a lot of negative publicity as a result (Sanderson, 2015).**

#### This speech isn’t protected constitutionally – a lot of students signed contracts that waived these rights

**Miller:** Miller, Katelyn P. [The Impact of Social Media on Intercollegiate Athletics] *Rutgers Capstone Program.* January 2016. RP

Social media is a podium for individuals to express themselves freely. In the United States, individual freedoms are highly protected and in certain instances are strenuously defended in the court system. Any attempted violation on those individual freedoms is bound to draw attention. As of now, there have been no lawsuits to date that have surfaced due to the social media policy of an institution (Epstein, 2012). However, there is a potential for such a lawsuit to occur. This potential is what makes it difficult for athletic departments. There are many challenges that athletic departments personally face when trying to figure out the best way to approach social media in reference to student-athlete use. There are many obstacles involved with monitoring social media accounts of student- athletes. One such obstacle includes First Amendment concerns. The First Amendment affords that Congress protects freedom of speech. It also ensures that Congress cannot create a law that curtails the freedom of speech. **Institutions leave themselves open for potential lawsuits based on the protections of the First Amendment when they decide to monitor their student-athletes’ comments on social media sites. This also holds true for when institutions forbid their student-athletes from using social media altogether**. This in part is due to the mere fact that such action taken by institutions against student-athletes perpetually threatens their right to free speech (Epstein, 2012). **However, there are some challenges that can be raised based on First Amendment rights. In order to begin a challenge against the rights of the First Amendment involving NCAA member institution social media policies, student-athletes need to hone in on the details of the type of institution they attend. Contractual language of any paperwork that was signed is also important because there could be stipulations outlining communication practices. The challenge of contractual language between the student-athlete and the institution is based on the student-athlete not facing consequences concerning stipulations that are included in their contract (Epstein, 2012).**

#### CP – coordination with 3rd party monitors

**Miller:** Miller, Katelyn P. [The Impact of Social Media on Intercollegiate Athletics] *Rutgers Capstone Program.* January 2016. RP

Social media is a podium for individuals to express themselves freely. In the United States, individual freedoms are highly protected and in certain instances are strenuously defended in the court system. Any attempted violation on those individual freedoms is bound to draw attention. As of now, there have been no lawsuits to date that have surfaced due to the social media policy of an institution (Epstein, 2012). However, there is a potential for such a lawsuit to occur. This potential is what makes it difficult for athletic departments. There are many challenges that athletic departments personally face when trying to figure out the best way to approach social media in reference to student-athlete use. There are many obstacles involved with monitoring social media accounts of student- athletes. One such obstacle includes First Amendment concerns. The First Amendment affords that Congress protects freedom of speech. It also ensures that Congress cannot create a law that curtails the freedom of speech. Institutions leave themselves open for potential lawsuits based on the protections of the First Amendment when they decide to monitor their student-athletes’ comments on social media sites. This also holds true for when institutions forbid their student-athletes from using social media altogether. This in part is due to the mere fact that such action taken by institutions against student-athletes perpetually threatens their right to free speech (Epstein, 2012). However, there are some challenges that can be raised based on First Amendment rights**. In order to begin a challenge against the rights of the First Amendment involving NCAA member institution social media policies, student-athletes need to hone in on the details of the type of institution they attend. Contractual language of any paperwork that was signed is also important because there could be stipulations outlining communication practices. The challenge of contractual language between the student-athlete and the institution is based on the student-athlete not facing consequences concerning stipulations that are included in their contract (Epstein, 2012). produced any kind of result. Which is why schools have looked to other options for assistance. It has become a trend for some big time schools to invest in these third party companies to monitor student-athletes activities on social media. A couple of companies include Varsity Monitor, whose intended purpose was to guarantee NCAA compliance; Centrix School in another third party business, whose client list charts Mississippi State University, among dozens of others (Epstein, 2012).**

#### Pragmatism arg – plan is too absolutionist

**Miller:** Miller, Katelyn P. [The Impact of Social Media on Intercollegiate Athletics] *Rutgers Capstone Program.* January 2016. RP

**Regardless of what a school or institution decides to do about a social media policy, it must be mindful of the potential consequences** (Epstein, 2012). **There needs to be a balanced approach, one that is not overly strict or overly relaxed. Social media is going to continue to impact intercollegiate athletics, athletic administration, coaches and players. Ultimately, at a certain point, some degree of control must be exerted, or else institutions could meet consequences that are not only tangible, but could serve to be quite severe on all accounts** (Epstein, 2012).

#### The NCAA will file expensive lawsuits at schools that don’t monitor

**Miller:** Miller, Katelyn P. [The Impact of Social Media on Intercollegiate Athletics] *Rutgers Capstone Program.* January 2016. RP

**Over the years, the NCAA has made considerable concessions in order to allow ample time for athletic departments to figure out their approach to social media. However, that time is coming to an end**. Athletics administrators will continue to be encouraged to allocate resources to front-end, rather than back-end, training and to outline clear limitations for social media usage (Sanderson, 2013). **Universities and colleges must accept the responsibility to educate and monitor student-athletes social media actions in order to prevent potential lawsuits and devastating repercussions from even being a possibility. In addition, the NCAA must also address the regulation of social media by instituting policy with well-defined guidelines (Sanderson, 2013). Student- athletes also need to take responsibility for their actions and be conscience of what they are putting on the Internet. The sooner all of this action occurs, the better off student- athletes and their member institutions will be concerning social media.**

### Gutting [athlete plan]

#### The idea of “student-athletes” is propagated by corrupt organizations like the NCAA to make it seem like kids get an education when they really are just tools to turn a profit.

**Gutting:** Gutting, Gary [Gary Gutting is a professor of philosophy at the University of Notre Dame, and an editor of [Notre Dame Philosophical Reviews](http://ndpr.nd.edu/about/). He is the author of, most recently, “Thinking the Impossible: French Philosophy since 1960,” and writes regularly for The Stone.] “The Myth of the ‘Student-Athlete’.” The New York Times. March 2012. RP

**People often dismiss philosophical disputes as mere quibbles about words.   But shifts in terminology can turn the tide in public debates.**  Think of the advantage Republicans gained when discussion of the Affordable Health Care Act became discussion of “Obamacare.” (Conversely, suppose we talked about “Bush-ed” instead of “No Child Left Behind”).  Or consider how much thinking about feminism has changed with the demise of “men” as a term for people in general. **These thoughts about philosophy and language occur to me as a significant portion of our nation takes part in the mounting frenzy of “March Madness,” the national college basketball championship. Throughout the tournament, announcers and commentators careful enough to heed the insistence of the National Collegiate Athletic Association, will refer to the players as “student-athletes.”** But is this term accurate? Or should we perhaps leave it behind for a more honest and precise name? **The term “student-athletes” implies that all enrolled students who play college sports are engaged in secondary (“extra-curricular”) activities that enhance their education**.  Their status, the term suggests, is essentially the same as members of the debate team or the band. **As the N.C.A.A. puts it, “Student-athletes must, therefore, be students first.”** There are, of course, many cases of athletes who are primarily students, particularly in “minor” (i.e., non-revenue producing) sports.  But what about Division I football and men’s basketball, the big-time programs with revenues in the tens of millions of dollars that are a major source of their schools’ national reputation?  Are the members of these teams typically students first? The N.C.A.A.’s own [2011 survey](http://www.ncaa.org/wps/wcm/connect/public/ncaa/pdfs/2011/di_goals_fara_2011) showed that by a wide variety of measures the answer is no.  For example, football and men’s basketball players (who are my primary focus here) identify themselves more strongly as athletes than as students, gave more weight in choosing their college to athletics than to academics, and, at least in season, spend more time on athletics than on their studies (and a large majority say they spend as much or more time on sports during the off-season).The same priority is reflected in the colleges’ own practices.  **Football and men’s basketball players are admitted and given full scholarships almost entirely because of their athletic abilities**.  Academic criteria for their admission are far below those for other students (for example, their [average SAT scores](http://www.usnews.com/education/blogs/paper-trail/2008/12/30/athletes-show-huge-gaps-in-sat-scores) are about 200 points lower than those of nonathletes). **Realistically, given the amount of time most such athletes  devote to their sports, they would have to be academically superior to the average student to do as well in their classes.  As a result, according to another**[**N.C.A.A. report**](http://www.ncaa.org/wps/wcm/connect/public/ncaa/pdfs/2011/trends+in+graduation-success+rates+and+federal+graduation+rates+at+ncaa+division+i+institutions)**, the graduation rate (given six years to complete the degree) for football players is 16 percent below the college average, and the rate for men’s basketball players is 25 percent below. Even these numbers understate the situation, since colleges provide underqualified athletes with**[**advisers**](http://www.stanforddaily.com/2011/03/09/1046687/)**who point them toward easier courses and majors and offer extraordinary amounts of**[**academic coaching and tutoring**](http://www.nytimes.com/2006/11/04/sports/ncaafootball/04ncaa.html?pagewanted=all)**, primarily designed to keep athletes eligible to play. It’s clear, then, that on the whole members of these teams are athletes first and students second, both from their own standpoint and from that of their schools.**

#### “Student-athlete” institutionalizes manipulation and deception by dominant institutions – turns case

**Gutting:** Gutting, Gary [Gary Gutting is a professor of philosophy at the University of Notre Dame, and an editor of [Notre Dame Philosophical Reviews](http://ndpr.nd.edu/about/). He is the author of, most recently, “Thinking the Impossible: French Philosophy since 1960,” and writes regularly for The Stone.] “The Myth of the ‘Student-Athlete’.” The New York Times. March 2012. RP

**Of course, many supporters of college athletics see no problem here.  They think that athletics provides great entertainment, develops loyalty to schools, and has itself an important educational role for team members — not to mention the millions of dollars it brings in.  So what’s the harm if high-profile players are more athletes than students? At a minimum, there’s the harm of saying that players are primarily students when they are not.  This is a falsehood institutionalized for the benefit of a profit-making system, and educational institutions should have no part in it. The deeper harm, however, lies in the fact that, in the United States, there is a strong strain of anti-intellectualism that undervalues intellectual culture and overvalues athletics.** As a result, intellectual culture receives far less support than it should, and is generally regarded as at best the idiosyncratic interest of an eccentric minority.  **Athletics, by contrast, is more than generously funded and embraced as an essential part of our national life. When colleges, our main centers of intellectual culture, lower standards of academic excellence in order to increase standards of athletic excellence, they implicitly support the popular marginalization of the intellectual enterprise**.   It is often said that the money brought in by athletics supports educational programs.  But [the large majority of schools lose money](http://www.ncaapublications.com/p-4237-2004-2010-revenues-and-expenses.aspx)on athletics, and the fact that some depend on sports income confirms, in monetary terms, the perceived superiority of athletics. To show proper respect for and support of their own central values, colleges need to ensure that their athletes truly are students first of all.  To do this they could look no further than their standard practice regarding nonathletic extracurricular activities. They could take account of athletic potential in the admission process the same way they do potential for debate, theater, student government or service projects. All admitted students would have to fall within the same range of academic ability, with exceptionally talented athletes meeting the same standards as applicants with exceptional talents in other areas. Such a move should be obvious for the many schools that lose large amounts of money on their athletic programs and have relatively little success with them.  (I don’t, however, underestimate the pressures to continue even such [disastrous programs](http://www.bloomberg.com/news/2011-08-16/rutgers-boosting-athletics-at-expense-of-academics-fails-to-emulate-texas.html).)  **But there’s little practical point to suggesting this move to colleges that make large amounts of money from athletics and strongly identify themselves with winning at the highest level**. Still, it’s hard to see how even these schools can maintain the myth that their revenue-producing players are primarily students, particularly as the moral case grows stronger f[or paying the athletes](http://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/8643/) who are central to the tens of millions of dollars some teams bring in each year.  But there is a way that profit-making athletic powerhouses could avoid the hypocrisy of the student-athlete. They could admit athletes who fall far short of their regular academic criteria as “associate students” (or maybe even “athlete-students”), who take just two or three courses a term and are not expected to receive a bachelor’s degree after four years.  They would instead receive an associate’s degree (like that currently awarded by some colleges), which would, after four years, put them in a position to gain regular admission to a college where they could complete a bachelor’s degree in two more years. (There would, of course, still be athletes who met standard criteria of admission and so would be expected to earn a regular degree in four years.) This would end the bad faith involved in pretending that unqualified students, devoted primarily to playing sports, could truly earn a bachelor’s degree.  But it would also give a significant educational purpose to the under-qualified athlete’s four years on campus. Although this is hardly an ideal solution, it’s better than trying to maintain the myth of the student-athlete.  **But what a magnificent gesture it would be if, say, a school with a legendary and lucrative football program could find the courage to give up the money and the glory for a ringing endorsement of intellectual values.**

### Parekh

#### Signaling effect is a reason to vote neg – banning bad forms of speech discourages its use.

**Parekh:** Parekh, Bhikhu “Is There a Case for Banning Hate Speech?” *Cambridge University Press.* 2012.

**Second, a legal prohibition is valuable for the message it sends. Such a law reassures all members of society – not only the currently targeted group, but also other members of society, for every one of them can under certain circumstances be a target – that the state values them all equally and is committed to maintaining a civil public discourse and protecting their fundamental interests. So far as the currently targeted group is concerned, the law legitimizes the state in its eyes, earns its trust, and acquires the right to its loyalty. It also lays down norms of civility and sends out clear messages concerning what is or is not an acceptable way of talking about and treating other members of society. Being a collective and public statement of the community’s moral identity and guiding values, the law affirms and enforces these values, haws a symbolic and educational significance, and helps shape the collective ethos.**

#### Europe proves that bans on hate prevent *mobilization* of oppressive groups

**Parekh:** Parekh, Bhikhu “Is There a Case for Banning Hate Speech?” *Cambridge University Press.* 2012.

**Third, proscription of hate speech plays an important role in preventing political mobilization of hostility against particular groups. This is especially true if the limits are enacted before hate-based organizations have built up powerful networks and support and before their rhetoric has coarsened public sensibility**. As I argued earlier, a climate of intimidation and violence against identified groups develops over time. **Once it takes deep roots and poisons the relations between different groups, law lacks a supportive public opinion and is either not enacted or not enforced or takes a drastic form and risks provoking widespread resistance. In the developing societies, and even in such mature democracies as Britain, France, Germany, and the Netherlands, it is common for politicians and political parties to outbid each other by pandering to base political instincts and provoking hatred of whatever group appears to arouse popular dislike. Banning hate speech discourages them from doing so and inflaming the all-too-easily aroused passions in pursuit of short term gains. Although other factors played a part as well, it is worth noting that British elections, their media coverage, and political discourse in general have been healthier and more moderate as a result of the law proscribing incitement to racial hatred. Similar things have happened in India, Germany, Austria, the Netherlands, South Africa, and elsewhere, in all of which crude expressions of racial nad religious hatred have declined in recent years.** This is not to say, of course, that these sentiments have disappeared or even substantially declined in these countries, but rather that public life is conducted in a more civil language and that politicians appealing to such sentiments are generally treated with disdain by the general public and disowned by their leaders.

#### Underground movements are less effective than those out in the open.

**Parekh:** Parekh, Bhikhu “Is There a Case for Banning Hate Speech?” *Cambridge University Press.* 2012.

It is sometimes argued that banning hate speech drives extremist groups under- ground and leaves us no means of knowing who they are and how much support they enjoy. It also alienates them from the wider society, even makes them more detennined. and helps them recruit those attracted by the allure of forbidden fruit. This is an important argument and its force should not be underestimated. How- eyer, it has its limits. **A ban on hate speech might drive extremist groups underground, but it also persuades their moderate and law-abiding members to dissociate them- selves from these groups.** **When extremist groups go underground, they are denied the oxygen of publicity and the aura of public respectability. This makes their oper- ations more difficult and denies them the opportunity to link up with other similar groups and recruit their members. While the ban might alienate extremist groups, it has the compensating advan- tage of securing the enthusiastic commitment and support of their target groups**. Besides, beyond a certain point, alienation need not be a source of worry. Some religious groups are alienated from the secular orientation of the liberal state, inst as the communists and polyamoronsly inclined persons bitterly resent its commitment (respectively) to market economy and rnonogamy. We accept such forms of alien- ation as inherent in collective life and do not seek to redress them by abandoning the liberal state. **The ban might harden the determination of some, but it is also likely to weaken that of those who seek respectability and do not want to be associated with ideas and groups considered so disreputable** as to be banned, or who are deterred by the cost involved in supporting them. There is the lure of the prohibited, but there is also the attraction of the respectable.

#### Bans on hate speech have a positive spillover – they lead to other policies eradicating discrimination.

**Parekh:** Parekh, Bhikhu “Is There a Case for Banning Hate Speech?” *Cambridge University Press.* 2012.

**It is sometimes argued that a ban on hate speech can easily become an end it itself and an excuse to avoid well-conceived antidiscrimination policies**. Although this can happen, as arguably it has in France, there is no obvious reason why it should. **As the cases of Britain, Netherlands, Germany, and Australia show, the ban on hate speech has gone hand in hand with a wider campaign to address the causes of racism, sexism, or homophobia by pressing for a well-worked-out strategy to tackle discrimination and disadvantage. This is not accidental and has a complex internal logic. Once people realize that ban on hate speech has made only a marginal difference in their lives, they look for the deeper causes and see the need for an antidiscrimination struggle in other areas of life. The ban on hate speech alerts the target groups to other goals to aim at and gives it the confidence to fight for them by actively participating in public life.**

#### Reverse enforcement isn’t a reason to reject bans– all laws can be abused – legal systems check

**Parekh:** Parekh, Bhikhu “Is There a Case for Banning Hate Speech?” *Cambridge University Press.* 2012.

**Some critics of the ban argue that law is a blunt instrument and cannot define hate speech precisely enough to avoid two important dangers.** First, it is unlikely to stand up in a court of law and not only brings the law into disrepute, but also disappoints those whom it claims to help. Second, it could be misused by the government to suppress legitimate dissent and struggle for human rights and even to whip up fears of national disintegration and social disharmony for which minorities are blamed. **Such abuses have occurred in Sri Lanka, apartheid South Africa, the erstwhile Soviet Union, and even in such democracies as India and Israel.** This is a powerful argument whose force advocates of the ban do not always fully appreciate. **However, it is not as fatal as is sometimes made out. It does not challenge the ban in principle, but rather its practicability. Law is a blunt instrument because it is necessarily articulated in terms of general categories, which cannot be sharply defined and distinguished, and because it cannot deal with the nuances and complexities of unique situations. This is true of all laws and is not unique to one banning hate speech. Because we cannot live without laws, we cope with their bluntness in three important ways. First, we make them precise by defining the relevant concepts as sharply and unambiguously as humanly possible.** The precision is never absolute and incontrovertible but adequate and reasonably workable. This is why hate speech must be defined with great care and distinguished from such vague expressions as offensive, hurtful, and distressing remarks, as I suggested earlier. **Secondly, we entrust the enforcement of the criminal law to public authorities and expect them to initiate prosecutions with due regard to their likely results and the public interest. Thirdly, we rely on judges to apply the laws and adapt it to the complex circumstances of each case with sensitivity and good judgment**. The resulting case law elucidates the law’s key concepts, explores the full range of its meaning and implications, and builds up an appropriate tradition of discourse on it. The First Amendment jurisprudence in the United States shows how the Supreme Court has wrestled with the conception of speech, at times rendered conflicting judgments, and over time built up a broad but not unquestioned consensus on what constitutes speech. We should expect the same in relation to hate speech.

#### Britain proves no reverse enforcement – laws did combat discrimination.

**Parekh:** Parekh, Bhikhu “Is There a Case for Banning Hate Speech?” *Cambridge University Press.* 2012.

**I might take the British experience to indicate how the ban on hate speech has worked in practice. Between 1987, when the Public Order Act 1986 Act came into effect, and 2004, there were sixty-five prosecutions for incitement to racial hatred.** On three occasions, the Attorney-General had declined to give his consent to prosecution on grounds of public interest. **Of the sixty-five prosecutions, forty-four resulted in convictions, twenty-six of these resulted in immediate sentences of imprisonment of between three months and two years, five in suspended prison sentences, and the rest in conditional discharge, fine, or community service.** Five prosecutions resulted in acquittal, six were dropped by the prosecution for various reasons, and ten had other outcomes such as that the defendants were judged medical unfit or had absconded or died. **These statistics show that the ban, if carefully drafted, can stand up in a court of law, has teeth, and can act as a check on hate speech.**

#### Reverse enforcement is non-unique – racist government will just be racist in other ways too – public backlash checks.

**Parekh:** Parekh, Bhikhu “Is There a Case for Banning Hate Speech?” *Cambridge University Press.* 2012.

**The danger that the ban can be misused is real, but that does not undermine the case for it. It is interesting that the African National Congress, which had suffered much from such an abuse under the apartheid regime, continued with the ban on hate speech in a suitably revised form on establishing a democratic South Africa. Many laws, including those relating to public order and national security, are open to abuse, but that does not mean that we should dispense with them. Furthermore, repressive governments can easily invoke all kinds of familiar reasons to justify suppression of dissenting movements and minority protests. No doubt a ban on hate speech provides them with one legitimizing reason, but it is not the only one and its absence would not make any difference to their actions.** Determined governments are able to misuse the ban because it is formulated in vague terms and applied in a biased manner, and it is this that needs to be addressed. **Given that the general point of the ban is to protect vulnerable groups against intimidation and violence, we could demand a more stringent judicial scrutiny when it is used for opposite purposes. An independent judiciary, a representative legislature, a popularly accountable government, a free press, and so on are our best protection against misuse of laws, including the ban on hate speech. Once these institutions are established, a ban has a good chance of success. If they are not, the ban is open to abuse as indeed are all other laws**. We cannot, therefore, discuss it in the abstract or in isolation from the wider political institutions and culture.

### Zelinger

#### The politics of the Aff results in speech being seen as legitimate – this means those who can’t use that channel are seen as different.

**Zelinger:** Zelinger, Julie [Freelance author and contributor, Mic.com] “6 Forms of Ableism We Need to Retire Immediately.” *Mic.com.* July 2015. RP

Nearly 1 in 5 people in the United States has a disability, according to a 2012 Census Bureau report. **Yet many forms of discrimination against the disability community not only persist, but are actually largely normalized and even integrated into our culture's very understanding (or, more accurately, disregard) of disabled people's experiences**. Ableism refers to "discrimination in favor of able-bodied people," according to the Oxford English Dictionary. But the reality of ableism extends beyond literal discriminatory acts (intentional or not) to the way our culture views disabled people as a concept. Ableism is also the belief that people with disabilities "need to be fixed or cannot function as full members of society" and that having a disability is "a defect rather than a dimension of difference," according to the authors of one 2008 Journal of Counseling and Development article on the topic, as reported by Feminists with Disabilities**. This interpretation of difference as defect is the true root of ableist acts that cause far too many to feel marginalized, discriminated against and ultimately devalued in this society**. Here are just six forms of this behavior that, though largely normalized, need to be retired immediately. 1. Failing to provide accessibility beyond wheelchair ramps Source: Getty Perhaps the most obvious form of discrimination people with disabilities face is the inability to access places and services open to their able-bodied counterparts — even with laws in place to prevent such inequality. As Tumblr user The (Chronically) Illest noted, while most people think "just putting wheelchair ramps everywhere" is sufficient, true accessibility accommodates all types of disabilities — not just physical disabilities that specifically bind people to wheelchairs. Accommodations can also include "braille, seeing-eye dogs/assistant dogs, ergonomic workspaces, easy to grip tools, closed captions ... class note-takers, recording devices for lectures" and other services and alterations. **Though accessibility is certainly a matter of convenience and equity, a lack of accessible resources can impact the very wellbeing of people with disabilities**. Individuals with disabilities have reported not being able to receive health care because their providers' facilities weren't accessible, and one study found that women with disabilities particularly face increased difficulty accessing reproductive health care, just to name two examples. 2. Using ableist language Source: Getty Ableism has become undeniably naturalized in the English language. Many people not only use words like "crazy," "insane" or "retarded" without a second thought, but many adamantly defend their use of these terms, decrying anybody who questions their right to do so as too "politically correct" or "sensitive." But this personal defense fails to recognize that ableist language is not about the words themselves so much as what their usage suggests the speaker feels about the individuals they represent. "When a critique of language that makes reference to disability is not welcome, it is nearly inevitable that, as a disabled person, I am not welcome either," Rachel Cohen-Rottenberg wrote in a 2013 Disability and Representation article. But beyond individual feelings, ableist language can contribute to a foundation of more systemic oppression of people with disabilities as a group. "If a culture's language is full of pejorative metaphors about a group of people," Cohen-Rottenberg continued, that culture is more likely to view those individuals as less entitled to rights like "housing, employment, medical care, education, access, and inclusion as people in a more favored group." 3. Able-bodied people failing to check their privilege Source: Getty It may not seem like a big deal in the moment, but able-bodied individuals fail to recognize the privilege of having access to every and any space accessible. As Erin Tatum points out at Everyday Feminism, plenty of people may not directly discriminate against people with disabilities but effectively do so by using resources allocated for them. For example, many able-bodied people use handicapped bathroom stalls or take up space in crowded elevators, rather than taking the stairs and leave room for people with disabilities who don't have other options, without a second thought. While these actions may not be the product of ill will, they are evidence of the way able-bodied privilege manifests in our society. There's a general cultural notion that "disability is something inherently negative," Allie Cannington, a board member of the American Association of People with Disabilities, told Mic. "There's a level of silencing that happens, and erasing of the disabled experience as an important experience because able-bodied experiences are the privileged experiences in our society."

### Ashby

#### The idea of free speech equates freedom with speech – it assumes that one can’t be a legitimate member of society unless they can speak

**Ashby:** Ashby, Christine [Professor, Syracuse University] “Whose ‘Voice’ is it Anyway?: Giving Voice Qualitative Research Involving Individuals that Type to Communicate.” *Disabilities Study Quarterly.* 2011. RP

One of the critical questions facing Disability Studies is how to make central the voices of individuals with disabilities in research? **In this paper, I interrogate the idea of "voice" in critical, qualitative research and its application to research involving individuals who do not use speech as their primary mode of expression**. How do critical, qualitative research and theories of voice position participants whose means of expression challenge traditional notions of normative participation? **I first problematize the premise of giving voice generally and then present four key issues, which include a) the question of competence for individuals who do not use speech, b) hearing silence, c) agency and voice, and d) broadening the conceptualization of voice beyond speech**. I conclude with implications for qualitative researchers and others interested in facilitating voice for individuals using alternative forms of expression. The celebration and representation of voices, rather, implies endowing speaking subjects with a special significance. Giving voice to subjects includes the representation of individuals and groups who have been muted and marginalized. It implies the expression of their unique experience, usually through the reproduction of personal testimony and narrative. The authors describe celebration of voice as "endowing speaking subjects with a special significance." While the message is clearly about empowerment and representation of marginalized perspectives, this passage also highlights a key challenge. **Representation centers on speech. Spoken voice is clearly privileged in American culture. Where, then, does that leave individuals who do not speak or for whom speech is not always reliable?** Consider the following example. During an observation in Jacob's eighth grade English class, Jacob was scheduled to present a poster and report on a famous nineteenth invention with his partner Diana. When it was their turn to present to the class, Jacob stood up and walked to the front with Diana. She handed Jacob the paper and he held it out in front of himself. Diana read the paper and turned back and forth between the class and Jacob who was standing to her right. Diana talked about the invention of the bicycle in 1890 and stated that it was important because they did not have bicycles before that. Jacob laughed and clucked quietly. As the presentation continued, there was muttering and snickering from students in the class. Diana read another page about the invention of the washing machine and then they were done. One of the male students in the class sarcastically shouted out, "Good job Jacob." Several other students cheered as Diana and Jacob took their seats. Jacob never spoke or participated in the presentation in any way other than holding the paper on which the material was written. I am sure he participated in the development of the project and the writing of the text, but that was not evident during the oral presentation. With no means of complex expression available to him in class, he was effectively silenced, rendered voiceless and unable to present himself as a thinking, capable member of the class. In an attempt to have Jacob present "without support" he was unable to present at all. His ideas and perspectives were never accessible to his peers. **Normative conceptions of performance, participation and independence clearly impact the opportunities provided to individuals with disabilities**. Some people with disabilities will always need the support of another person to communicate and make themselves heard. Traditional liberal theory leaves individuals labeled with cognitive disabilities outside the ranks of "citizen" (Erevelles, 2002). This often results from an emphasis on independence and utilitarian principles of liberal theory. In keeping with the idea of a self-sufficient, rational being as the ideal of American individualism, disability studies scholars have recognized that "the autonomous individual is imagined as having inviolate boundaries that enable unfettered self-determination, creating a myth of wholeness" (Thomson, 1996, p. 32). In western culture, independence is prized over interdependence and social good comes from "one's individual utility, intrinsic ability and personal performance with society being enriched when individuals attain their personal ends" (Kliewer, 1998, p. 3). People considered to have cognitive disabilities, some of whom may never be able to function in ways that are considered independent according to Western traditions, are often seen or constructed as less then fully human. I would argue, however, that none of us operates truly independently and that the idea of inviolate boundaries is a myth for everyone. Unfortunately, if you require support from others to dress, or move or communicate those dependencies become justification for exclusion from the ranks of the American ideal and perhaps from the ranks of those who have a "voice" that merits attention**. If we continue to conceptualize voice as speech, certain individuals with disabilities will always be constructed as being without one**. If we only listen to a normative voice (Mazzei, 2009), one that looks and sounds familiar, we will recreate that which we already "know." However, if we think of voice more broadly as the ability to express oneself and be heard by others, that can encompass typed text, non-verbal communication, gestural communication or silence, which leaves the door open for a more expansive conceptualization of participation and engagement. Mazzei (2009) argues for an orientation of "listening in the cracks," hearing voice in all aspects of interaction, from the words spoken — or typed — to the gestures and silences. **Listening for the unvoiced and the differently voiced can be messy, uncomfortable work, but it creates the opportunity for a fuller, richer understanding.**

#### The alternative – reject the Aff’s conception of speech as a recognition that free speech isn’t innately valuable – methods of alternate communication are better and more inclusive.

**Ashby:** Ashby, Christine [Professor, Syracuse University] “Whose ‘Voice’ is it Anyway?: Giving Voice Qualitative Research Involving Individuals that Type to Communicate.” *Disabilities Study Quarterly.* 2011. RP

**People considered to have cognitive disabilities, some of whom may never be able to function in ways that are considered independent according to Western traditions, are often seen or constructed as less then fully human.** I would argue, however, that none of us operates truly independently and that the idea of inviolate boundaries is a myth for everyone. Unfortunately, if you require support from others to dress, or move or communicate those dependencies become justification for exclusion from the ranks of the American ideal and perhaps from the ranks of those who have a "voice" that merits attention. **If we continue to conceptualize voice as speech, certain individuals with disabilities will always be constructed as being without one. If we only listen to a normative voice** (Mazzei, 2009), one that looks and sounds familiar, we will recreate that which we already "know." **However, if we think of voice more broadly as the ability to express oneself and be heard by others, that can encompass typed text, non-verbal communication, gestural communication or silence, which leaves the door open for a more expansive conceptualization of participation and engagement. Mazzei (2009) argues for an orientation of "listening in the cracks," hearing voice in all aspects of interaction, from the words spoken — or typed — to the gestures and silences.** Listening for the unvoiced and the differently voiced can be messy, uncomfortable work, but it creates the opportunity for a fuller, richer understanding. The issues raised in this article have implications and import both to educators and researchers. Broadening the conceptualization of voice in the classroom is emancipatory for people who do not speak. **The emphasis on verbal speech leaves many non-speaking people with disabilities further marginalized in their school and classroom communities. When speech is considered the only, or at least, preferred, way to express one's wants and ideas, that can limit the access and support provided for those individuals who communicate in nontraditional ways.**

### Simplican

#### The Aff’s faith in free speech is misplaced – democratic dialogue forces people with disabilities into a double bind – either they try to conform and are stigmatized, or they don’t and democratic democracy leaves them out

**Simplican:** Simplican, Stacy [Researcher, Michigan State University] “Disabling Democracy: How Disability Reconfigures Deliberative Democratic Norms.” 2009. RP

**Deliberative democracy harbors a tension. On one hand, in order for the process and outcome to be legitimate, deliberative democrats require inclusive participation and emphasize the involvement of persons directly affected by any decisions. On the other hand, deliberative democrats also insist that all participants meet certain cognitive and dispositional requirements in order to share equally in the process of reason giving and decision making. This tension between inclusion and intelligibility ultimately excludes certain members of the population, thereby negating the possibility of full inclusion. Deliberative democrats who recognize this tension offer a twofold solution of minimization and representation. First, because only a minimal number of people lack communicative competence, their absence does not jeopardize the legitimacy of deliberation**. Second, other participants, such as guardians or experts, can best represent the needs of absent speechless populations. This twofold approach is problematic. **Diminishing the size and importance of speechless populations renders vulnerable groups even more invisible and marginalizes their needs**. Further, representational solutions neglect the ways in which nonverbal and embodied participation transmit meaning. **Instead of exclusion, experiences of speechless populations reveal that atypical patterns of speech are meaningful to communicative outcomes and refute deliberative democratic norms requiring transparent speech, reasonableness, and communicative reciprocity.** **Speechless populations include people whose communication defies reasonable and coherent standards, particularly individuals who are physically unable to speak verbally due to age or disability**. By grounding the analysis in the experiences of people with disabilities, this paper expands the notion of communicative competence and builds on the work of other feminist and critical scholars who have contested the boundaries of legitimate speech (Benhabib 1992; Langsdorf 2000; Young 2000). While prior work has aimed to bolster the inclusivity of deliberative democracy, these re-workings continue to conceptualize participation as reasonable speech, thereby reproducing exclusion and narrowly constructing the purpose of deliberative democracy. Because millions of Americans with emotional and cognitive disabilities are disenfranchised through state constitutional and statutory restrictions, salvaging deliberative democracy as an enduring inclusive forum is vital to the political participation of speechless populations (Appelbaum 2000; Schriner and Ochs 2000). While deliberative democrats assume that speechless populations threaten the legitimacy of deliberative outcomes, they ignore deliberative locations that already promote the inclusion of people with significant cognitive disabilities, such as advocacy conferences convened specifically around disability rights. These deliberative settings demonstrate the effectiveness of embodied participatory methods.

#### Their assumption that talking is the “normal” and “usual” way to communicate privileges it above other mediums – this results in exclusion of those seen as different

**Simplican:** Simplican, Stacy [Researcher, Michigan State University] “Disabling Democracy: How Disability Reconfigures Deliberative Democratic Norms.” 2009. RP

**According to Habermas’s communicative theory of deliberative democracy, all persons who are affected by the outcome of a policy should be able to assent to the consequences of communication. Yet he permits only subjects who are communicatively competent to participate**. By communicative competence, Habermas assumes that all participants offer utterances that are understandable to others. At this point, Habermas’s co-commitments collide. Emergent from this disjuncture is a dilemma of distortion wherein two deliberative values conflict: (1) who is included and (2) how they deliberate. On one hand, Habermas argues that “nothing better prevents others from perspectivally distorting one’s own interests than actual participation” (1984, 186). This move safeguards the validity of individual contributions through universal inclusion. **On the other hand, he idealizes language as the single method of communication because only “linguistic expressions have identical meanings for different users” (1996, 11). Language, specifically rational argument, deters distortion by forging congruence between intent, speech, and interpretation. Assuming that all participants are linguistically competent and that they satisfy conditions of universal inclusion, no tension exists within Habermas’s theory. However, this assumption is made at the expense of erasure and elides the reality that deliberative outcomes powerfully affect speechless populations. In these circumstances, citizens can be denied inclusion due to presumed communicative incompetence.**

### Johnson

#### Legal precedent dictates that publication of rape survivors identities is a public good that makes it constitutionally protected.

**Johnson:** Johnson, Michelle “OF PUBLIC INTEREST: HOW COURTS HANDLE RAPE VICTIMS' PRIVACY SUITS.” Communication, Law, and Policy. 1999. RP

\*\*\*Bracketed for offensiveness

**Star-Telegram, Inc. v. Doe.In 1989, Fort Worth resident Jane Doe was raped at knife point and terrorized in her home by a man who had been on parole for less than three months**. Following the early morning assault, the assailant robbed Doe, bound her with strips of bed sheets and stole her car. Doe managed to free herself and call the police. Two days later, police arrested the rapist while he was driving Doe's car in Oklahoma.On a routine visit to the local police station, a reporter for the Fort Worth Star-Telegram read a copy of the police report on Doe's rape. The report included the victim's real name and address. **The reporter, Betsy Tong, wrote two stories about the rape**.[271] **One, published the day after the rape, reported Doe's age, neighborhood, possession of a home security system and a 1984 black Jagua**r, and the fact that Doe was taking medication.[272] The second article, published two days after the rape, identified Doe as the owner of a travel agency.[273] While neither article included Doe's name, people who knew her could easily identify her as the victim.[274] Doe sued Tong and the Star-Telegram for invasion of privacy, intentional infliction of emotional distress and negligence.[275] The trial court granted the newspaper summary judgment because the articles were true and of public interest.[276] The Texas Court of Appeals reversed the ruling. **The newspaper appealed to the Texas Supreme Court, which ruled in the newspaper's favor in spite of the fact that "there is a presumption under Texas law that the public has no legitimate interest in private embarrassing facts about private citizens**."[278] The media should avoid unnecessary disclosure of private information, particularly when such information could be embarrassing, the court said, but holding the media responsible for the effect of each disclosure could encourage self-censorship. The court concluded: Facts which do not directly identify an innocent individual but which make that person identifiable to persons already aware of uniquely identifying personal information, may or may not be of legitimate public interest. **To require the media to sort through an inventory of facts, to deliberate, and to catalogue each of them according to their individual and cumulative impact under all circumstances, would impose an impossible task; a task which foreseeably could cause critical information of legitimate public interest to be withheld until it becomes untimely and worthless to an informed public. As suggested by Warren and Brandeis, courts have accepted newsworthiness as a defense in common law privacy suits.** [280] And while the decisions leave open the possibility that there may be a time when victims' names are not newsworthy, there has yet to be a circumstance in which a court has found this to be the case. **Judges seem reluctant to second-guess the media and perhaps foster self-censorship on the part of journalists**. As Judge Higginbotham said in Ross, "Reporters must have some freedom to respond to journalistic exigencies without fear that even a slight, and understandable, mistake will subject them to liability. Exuberant judicial blue-penciling after-the-fact would blunt the quills of even the most honorable journalists."[281] The defense of newsworthiness, then, combined with the privileges extended by Cox and Florida Star, make it highly unlikely that a victim of any crime will be successful in seeking remuneration from a news organization for publication of his or her identity. Rape victims' privacy suits force the courts to balance individual rights and the collective good. The collective good nearly always carries the most weight. **Judges are sympathetic to victims' trauma and acknowledge their right to privacy,[282] but judges realize that if they punish the news media for publishing a rape [survivors] ~~victim's~~ name in one situation, journalists may forego using victims' names even when they are crucial in reporting. In addition, designating a fact so common as a name as private and its publication beyond the scope of First Amendment protection creates confusion about what is and is not private.** If the names of sex-crime victims are private facts, then the names of domestic violence and assault victims may be too. People convicted of alcohol and drug crimes may not want their names in the news. Politicians and celebrities may not want their children's names published or broadcast. Yet these details-these names-may be important to public awareness and understanding of social issues. Rock Hudson's death from AIDS increased public awareness of that deadly virus. Reports of arrests of sports stars for beating their wives and girlfriends have increased awareness of domestic violence. **A key principle in journalism is that names are news.** By putting a face on a social ill-whether it is crime or poverty-journalists make that problem more relevant to readers and viewers. As Judge Higginbotham explained in Ross v. Midwest Communications, the power in WCCO's story came from presenting the victims and the accused as real people. **The First Amendment exists largely to ensure that important public issues are discussed openly and fully**. The courts' decisions in rape victims' privacy suits reflect this principle by protecting the news media as they attempt to create compelling reports about crime, and rape in particular. If the courts were to provide less protection to the publication of truthful facts, they would handicap the press in its attempt to inform the public. If any change in the law is needed, it is a stronger statement from the courts about the First Amendment protection given to the publication of truthful information. The courts' insistence on issuing limited decisions allows rape victims to pursue cases they have little chances of winning and forces news organizations to spend time and money defending truthful and important stories. Although privacy law pits individuals' needs against the good of the collective, the two may be reconcilable. Some measure of privacy is essential to democracy because it allows individuals to experiment with ideas, develop their opinions, and control fundamental aspects of their lives. Privacy law provides some of these benefits primarily by placing certain aspects of individuals' lives outside the arena of government control, as when the U.S. Supreme Court gave constitutional protection to birth control and abortion.[285] The Court has said the government may not dictate individuals' choices in regard to reproduction. Without this basic measure of privacy, individuals would live in fear of government, unable to restrain a potentially pervasive power in their lives and wary of drawing attention from the powers that be. However, if rape victims want to protect their privacy, they should do so in a way that does not threaten freedom of the press-a right that benefits society as well as individual news organizations. In a few cases, crime victims and witnesses have been able to recover damages after the press published their names under circumstances that clearly could have placed their lives in danger.[287] The victims and witnesses were successful because they sued for negligence, a tort of general applicability. The First Amendment provides less protection to the media from laws of general applicability, which affect speech only incidentally. For example, the First Amendment does not give newspapers immunity from tax laws-news organizations must pay taxes like any other business.[288]Similarly, the First Amendment will not protect a newspaper from revealing a victim's name to her attacker any more than it will protect police who disseminate her name.[289] Thomas I. Emerson has said individuals and society are best served when they pursue privacy protection through laws of general applicability. "Attempts to safeguard privacy by bottling up expression are bound to be largely futile and probably self-defeating."[290] Some scholars suggest the right to be let alone may include the right to be free from intrusion into one's home or interference in one's personal relationships, but it does not or should not include "any general right not to be talked about."[291] In a society in which so many aspects of one's life touches the public sphere, and information is readily available, it is natural for citizens to discuss others' lives in a search for ways to deal with difficult issues. By gossiping with their children about the problems of neighbors and celebrities, parents may find ways to deal with their family's troubles in school, health problems or drug use. By discussing how the criminal justice system treated one rape victim, people may develop ideas for reform or become better able to navigate the system themselves. To protect journalists in their work, then, the courts have constructed and accepted a number of strong defenses against privacy suits. The Supreme Court has given the press near immunity for accurately publishing information obtained from public documents and government proceedings.[292] Information obtained legally from other sources also receives a great deal of protection.[293] And finally, courts will not punish the press for publishing information that is newsworthy, and they nearly always find information about crime-including victimS' names-newsworthy.[294] The one shortcoming in decisions of the Supreme Court and other courts is that the insistence on limiting holdings to the present case facts gives victims the hope that they may eventually present a case in which a compelling state interest in protecting victims' privacy overrides the press' First Amendment rights. The overall pattern in the courts' decisions makes it clear that this situation is unlikely, but relatively few journalists, lawyers or members of the public are familiar with cases other than Cox and Florida Star. Crime victims may be dissatisfied with the limited protection the law currently gives them and their privacy, but one cannot deny that it is in society's best interests to have the press examine and report openly on crime and the execution of justice. For example, in Ross v. Midwest Communications, a convicted rapist's ability to have his case re-examined depended on the press' ability to make a compelling argument. The court explained, "Communicating that this particular victim was a real person with roots in the community, and showing ... [the television station's] knowledge of the details of the attack upon her, were of unique importance to the credibility and persuasive force of the story."[295] In spite of the founding fathers' best efforts to establish a criminal justice system that respects citizens' civil rights and errs on the side of caution in criminal cases, miscarriages of justice occur. The press must be free to investigate, report and, if necessary, lobby for the righting of wrongs-on behalf of both the victim and the suspect.

### Denno

#### SCOTUS has ruled that newspapers have a constitutional right to disclose identifies of rape survivors

**Denno:** Denno, Deborah W. [Contributor, Associate Professor of Law, Fordham University School of Law; B.A., 1974, Uni- versity ofVirginia; M.A., 1975, University ofToronto; Ph.D., 1982, J.D., 1989, Univer- sity of Pennsylvania.] “Perspectives on Disclosing Rape Victims' Names.” Fordham Law Review. Volume 61. 1993. RP

\*\*\*Bracketed for offensiveness

**The great majority of news organizations in this country do not publish the names of alleged rape [survivors] ~~victims~~ either at the time the rape is reported or when the victim testifies at trial**.' This "conspiracy of si- lence" is based, in part, on the media's recognition that rape is more personal, traumatic, and stigmatizing than other crimes.' Rape victims are also treated differently than other crime victims by American society and the criminal justice system. Two years ago, NBC Nightly News sparked a nationwide debate when it broadcasted the name of the woman who had accused William Kennedy Smith of rape after her identity had been disclosed by two tab- loids. The accuser had not wanted her name revealed and was said to have been "shocked" by NBC's decision.' **Although several news organizations, including The New York Times," subsequently revealed the accuser's name, the other major television networks and most media did not. To date,** the United States Supreme Court has protected a news organization's decision to disclose a rape victim's name even though three states-Florida, South Carolina, and GeorgiaP-have statutes prohibiting the media from doing so. Florida Star v. B.J.F.,' the Court's most recent ruling on this issue, however, has left undetermined whether, in certain circumstances, a news organization violates a rape victim's constitutional right to privacy by revealing her name." Although no news organization was found liable for revealing the alleged rape victim's identity in the William Kennedy Smith case, the disclo- sure nonetheless touched a century-long conflict between two cherished values: the individual's right to privacy and the freedom ofthe press as guaranteed by the First and Fourteenth Amendments.'

#### 

### NAESV

#### Reporting the names and details about survivors of sexual violence causes stigma.

**NAESV:** National Alliance to End Sexual Violence [Organization that fights sexual violence] “Naming Victims in the Media.” 2017. RP

\*\*\*Bracketed for offensiveness

**Some people argue that journalists should identify [survivors] ~~victims~~ of rape or sexual assault in news stories because they should be treated like any other crime victims. This position ignores important and unique aspects of the crimes of rape and sexual assault. Although rape and sexual assault occur at an alarming rate in our society, the vast majority of these crimes remain unreported. ~~Victims~~ [Survivors] remain silent because they fear being subjected to the intense public scrutiny and blame that often follow being named in the media. Our culture continues to condemn the [survivors] ~~victim~~ for rape and, as a result, an extraordinary amount of shame and silence follow the crime. Publicizing the name of a rape complainant under these conditions only deters more victims from coming forward. As a result, the NAESV urges members of the news media to adopt the following policy on publishing the names of persons who come forward with a change of rape or sexual assault. It is the policy of this news organization not to publish the names of minors who come forward with allegations of sexual abuse or rape and to avoid reporting stories in such a way that these minors are identifiable.** Barring extraordinary circumstances, it is also the policy of this news organization not to publish the names of adults who come forward with allegations of sexual abuse or rape unless those individuals are willing to be named in the media. Members of this news organization will report these stories with sensitivity toward the stigma associated with being publicly named. Others argue that, until more people are named as sexual assault victims, the stigma attached to being a victim will not fade away. They contend that the news media should therefore publish the names of victims who come forward with allegations as a way to decrease the stigma of rape. The NAESV believes, however, that we should not advance social change on the backs of unwilling and traumatized victims, who have so recently been used for others’ ends. Fortunately, many brave victims are increasingly willing to be named publicly. Part of their healing process may be to stand up and declare that they have no shame in what has been done to them and that the experience of rape is all too common in this culture. We ask that members of the news media report their stories, which are crucial for our society to hear.

### March

#### The University of Kentucky is another example of campus newspapers exposing details of rape survivors

**March:** March, Mary Tyler [Contributor, Student Press Law Center] “University of Kentucky Victims Seek to Join Lawsuit Against Student Newspaper.” *Student Press Law Center.* November 2016. RP

\*\*\*Bracketed for offensiveness

**KENTUCKY—Two of the victims reportedly detailed in a sexual assault and harassment investigation at the University of Kentucky are seeking to join the university in its lawsuit against the school’s student newspaper. The case follows a months-long open records battle between the university and its independent student newspaper, the Kentucky Kernel, over documents relating to sexual misconduct accusations against former associate professor, James Harwood. The victims, labeled Jane Doe 1 and Jane Doe 2 in a brief filed Monday in Fayette Circuit Court, say that news stories covering the case have already sufficiently informed the public about Harwood and his reported sexual misconduct. “Although the victims believe that su cient information should be disclosed to warn about Harwood’s actions (facts that are now publicly known), the [survivors] ~~victims~~ adamantly oppose the disclosure of additional highly personal records about them that may lead the media or other interested persons to discover their identities,”** the brief says. “As the media’s interest in the victims’ story has persisted, the line between the laudable goal of transparency and the blatant invasion of privacy has been crossed.” Tom Miller, the Kernel’s attorney, said he will oppose the motion, but it will likely pass at the discretion of the judge. In an objection filed Tuesday, Miller wrote that the motion involves a question strictly of law and whether the records were public records — not necessarily a matter of who was impacted. “There is neither any basis nor necessity for granting what is e ectively a motion to intervene,” he wrote. In the brief, Miller also noted concerns surrounding a potential conflict of interest between the victims’ attorney and the University of Kentucky. The victims, according to the Lexington Herald Leader, are being represented for free by Daniel A. Cohen, an Atlanta-based attorney with the Washington law firm Baker Donelson. Cohen specializes in assisting universities with Title IX and campus sexual assault investigations. The firm, the brief notes, also represents the University of Kentucky, though information regarding the university and the firm’s ties appeared to have been removed from Baker Donelson’s website just prior to Miller’s filing of the motion. The brief cites a July 2015 Ethics Reporter issued by the Kentucky Legislative Ethics Commission which found that the UK Research Foundation had ended a nine-month, $108,000 lobbying contract with Baker Donelson. According to the Center for Responsive Politics, the university paid Baker Donelson $50,000 in 2015 for lobbying e orts done on behalf of UK. Cohen did not respond to requests for comment. While Miller says the university is already ably represented, UK spokesperson Jay Blanton said he supported the victims’ motion to join the suit. “The university’s steadfast belief has been — and continues to be — that only victim-survivors should be able to choose when, how much, or even if to tell their stories,” he said in an email to the Student Press Law Center. “We hope the O ce of the Attorney General and the Kernel will agree with this motion, which is customary in cases like these, to allow the voices of victim-survivors to be heard in this case. We should all want to hear their stories — directly from them in an unfiltered manner of their choosing. That has always been what is at stake in this litigation.” The lawsuit follows a battle over public records that began in April when then editor-in-chief Will Wright requested documents that detailed an investigation into multiple complaints of sexual misconduct by Harwood toward students. Marjorie Kirk, the Kernel’s current editor in chief, was unavailable for comment at press time. UK investigators discovered enough evidence to take disciplinary action against Harwood but, before the case could reach a hearing, Harwood tendered his resignation in February under a provision in his university employment agreement, remaining salaried with benefits until his resignation in August. Because his resignation precluded a hearing, the victims who filed complaints against Harwood will not be able to appeal the decision, and the investigation will not be disclosed if he applies for a job elsewhere. When the Kernel requested additional documents, the university refused, citing privacy concerns. UK also denied Attorney General Andy Beshear’s o ce access to review the documents after the Kernel appealed the university’s decision to withhold the records, prompting Beshear to find UK in violation of the state’s open records act and to demand the documents be released. UK then sued the Kernel in an attempt to overturn Beshear’s ruling. During that time, the Kernel came into possession of a 122-page investigation document, with the victims’ names and identifiers redacted, from an anonymous source related to the case. The documents contained details including a number of accusations against Harwood for sexual harassment and assault from multiple complainants. University o cials would not confirm the authenticity of the documents acquired by the Kernel, but the newspaper reported that the report was signed by the university’s deputy Title IX coordinator, Martha Alexander. Since the university filed suit against the Kernel, university President Eli Capilouto and the school’s administration have faced local and national criticism for making such an unusually aggressive move against their own students, including condemnation from UK professors and members of its Board of Trustees. On Friday, according to Lexington’s local news a liate WKYT, students marched through the university’s campus to bring attention to sexual assault on campus and to call for the release of records relating to sexual assault investigations. Many students carried signs and gathered in front of Capilouto’s home chanting, “Protect your students, not your reputation,” WKYT reported. Nearly 160 miles southwest of UK, Western Kentucky University has denied its student newspaper’s request for employee sexual misconduct records, citing multiple Kentucky Revised Statutes and the ongoing litigation between UK and the Kernel. According to a report by the newspaper, the WKU Herald, Andrea Anderson, assistant general counsel and Title IX coordinator, wrote "WKU is aware of the ongoing litigation between the Kentucky Kernel and the University of Kentucky...Should the matter resolve with the court ordering production of UK's Title IX investigative files, WKU will supplement this response.”

### Saul

#### Releasing details on sexual assault survivors is constitutionally protected

**Saul:** Saul, Stephanie [Reporter, The New York Times] “Campus Press vs. Colleges: Kentucky Suit Highlights Free- Speech Fight.” *The New York Times.* December 2016. RP

-Several colleges

-Even if pseudonym used, personal details/context often released

**The confidential informant had an explosive tip for the University of Kentucky’s campus newspaper: An associate professor of entomology had been accused of groping students, and the college, after an investigation, had permitted him to leave quietly.** On the trail of a hot story, the paper, The Kentucky Kernel, requested files from the university. Officials turned over some documents, but they contained few details. Months later, though, in August, a 122-page dossier about the accusations was leaked to the newspaper, which reported the specifics, including one woman’s claim that the professor had grabbed her buttocks, crotch and breast during an off- campus conference in 2013. Now The Kernel is being sued by the university in a continuing battle over whether records in the case should be disclosed. And it is just one of several disputes between universities and student newspapers, which are pushing administrations to become more transparent about sexual assault, a defining issue on campuses around the country. With cuts at traditional news organizations, student journalists see their role as increasingly important in shedding light on the subject and are becoming more dogged in ferreting out information about sexual assault cases, particularly when faculty or student perpetrators could simply find other jobs or transfer to another university. Some are demanding that the student body be given details when a college confirms wrongdoing, particularly of a violent nature, by students, faculty or staff members. Universities, though, often invoke privacy concerns in refusing to make details of inquiries public. “The critical question is whether we are able to continue protecting the confidentiality and privacy of victim-survivors who courageously come forward to report details of their victimization,” wrote the University of Kentucky’s president, Eli Capilouto, in a universitywide email. “The protection of victim-survivor privacy,” the email continued, “requires more than the redaction of names. It requires the redaction of any information that might reasonably lead to the identification of victim-survivors as well as the intimate details of the sexual assault.” **Frank LoMonte, executive director of the Student Press Law Center, a nonprofit organization, sees it another way. With state funding reductions and increasing competition for top students, colleges are more motivated than ever, he suggested, to maintain their reputations. “The stakes have increased for colleges to keep secrets,” Mr. LoMonte said. “They’re getting more aggressive.” His group has helped student journalists fight to get documents and other information, and has worked to fend off funding cuts that students believe were in retaliation for controversial articles**. At Brandeis University, in Waltham, Mass., three staff members on The Justice, the student newspaper, were notified in February that they would be called to a university meeting — the first step in a disciplinary process — because the newspaper had audiotaped a public rally in 2015 at which students criticized the university’s handling of sexual assault cases. Someone had complained that the rally was recorded without permission, which the complainant viewed as possibly violating state law and college rules. The Justice had used the recordings for an article about the rally. No formal charges were filed, the university said, because it concluded that student journalists covering public events were within their rights to use recording devices. “We were very concerned that the student press at Brandeis was being targeted unfairly,” said Ari Cohn, a lawyer with the nonprofit Foundation for Individual Rights in Education, which aided the students. “The public relations issues around sexual assault on campus are massive right now. There’s definitely a desire by universities to be out in front of those issues and to show they’re taking this seriously. In some cases, like this one, that causes an overreaction.” **The Daily Tar Heel, an independent publication at the University of North Carolina-Chapel Hill, sued the university on Nov. 21 after officials refused to release details about sexual assault cases there**. In a statement, the vice chancellor for communications, Joel Curran, said the university had a “profound responsibility to protect and vigorously defend the privacy of sexual assault victims and all students, including witnesses, who may be involved.” But Jane Wester, The Daily Tar Heel’s editor, said, “Once someone has been found responsible for a violent offense, the university is under no obligation to keep that information private.” At Indiana University, the independent Indiana Daily Student has been battling since September to obtain a 13-page report on the school’s inquiry into sexual assault accusations against a former ballet instructor, Guoping Wang, who was arrested in July and charged with sexual battery of a student. The criminal case is pending. Hannah Alani, the investigations editor for The Indiana Daily Student, said the university’s refusal to release its report – partly on grounds that it is part of Mr. Wang’s personnel file — fits a pattern in which the university has repeatedly declined requests related to sexual assault, prompting it to seek legal advice. “Indiana University insists it takes sexual assault seriously,” said Ms. Alani, whose newspaper has been aggressively covering campus sexual assault. “But when pressed for transparency on student and faculty cases, the university tells the public very little.” An Indiana spokeswoman, Margie Smith-Simmons, said the documents requested by the paper were not “public records,” and therefore could not be released. **The Kernel, which is partly financed by the University of Kentucky, has won numerous journalism awards. The university itself is home to a First Amendment Center endowed by the venerable Scripps Howard broadcasting and newspaper chain. The paper’s legal troubles began when it sought the records about the accusations against the professor. After the university refused to release the documents, the newspaper appealed to the state attorney general — the procedure under Kentucky law. The attorney general first ruled that the university should submit the documents to him for review in private. When it refused, he ruled that the university should release the documents to the newspaper with the names redacted. As the dispute continued, the records in the case were leaked to the newspaper, which published an article based on them. Even though the records have already been disclosed, the university sued the paper to prevent the attorney general’s order from establishing what it called a dangerous legal precedent, arguing that such a ruling would open the floodgates for the release of additional documents protected by student privacy provisions**. Jay Blanton, a university spokesman, defended the college’s record on sexual assault cases over all, as well as its handling of the case involving the entomology professor, James Harwood. The professor, who did not respond to requests for comment, has denied the accusations. “The agreement with Dr. Harwood removed him from campus and prevented him from interacting with students immediately,” Mr. Blanton said. The case has pitted the college’s journalism faculty against its president, Mr. Capilouto, who criticized the newspaper’s coverage. “The president said that I published salacious details to gain readership,” said Marjorie Kirk, the newspaper’s editor. “I am incredibly insulted.” Supporters of The Kernel say the university’s position may pose a public threat by permitting sexual predators to remain anonymous. At a meeting of university trustees, David Hawpe, a trustee and former editor of The Courier-Journal of Louisville, questioned whether the university was in danger of making the same kind of mistakes as the Catholic Church, which covered up sexual abuse by priests and permitted them to move from one parish to another. Internal emails released by the university reveal that Dr. Harwood, who has an impressive record of teaching and published research, was interviewing for other jobs at the time of his resignation. The university argues that releasing information makes victims afraid to come forward, fearful that their cases will become public. The university has suggested a connection between The Kernel’s reporting and a decline in reported campus sexual misconduct cases. Mr. Capilouto said the decline — to 38 reports this year compared with 59 in the same period last year — “underscores the chilling impact that news reports are having on the willingness of victim-survivors to come forward.” And the professor’s accusers, whose representative initially encouraged the newspaper to report on the case, are now supporting the university’s position after a meeting with Mr. Capilouto.

### Schworm

#### Campus newspapers have publicly named rape survivors – this is dangerous and should be banned.

**Schworm:** Schworm, Peter [Contributor, The Boston Globe] “Naming of Rape Victim leads to dispute at Bridgewater State.” *The Boston Globe.* April 2012. RP

\*\*\*Bracketed for offensivness

BRIDGEWATER - **A college newspaper that printed the name of a rape [survivor] ~~victim~~ who spoke at a recent rally against sexual violence has caused an angry backlash on campus here and touched off controversy over the administration’s response**. On Friday, the editor of the Bridgewater State University student newspaper remained adamant that she will resist growing calls to remove the online version of the article, while the paper’s faculty adviser contested his apparent ouster. The imbroglio features conflicting accounts from college officials and the newspaper, underscoring the often tense relationship between campus administrators and student newspapers and the emotionally charged ethical debate over whether it is ever acceptable to name sexual assault victims. **In its April 11 edition, The Comment newspaper published an article about a female student who shared her experience of being raped and coping with the aftermath.** The student identified herself by name at the “Take Back The Night’’ march, according to Mary Polleys, the newspaper’s editor. **The rally was held on campus and attended by some 200 people. The article drew immediate protests from students who considered it a potentially dangerous invasion of the woman’s privacy, and on Wednesday Polleys was called to meet with Dana Mohler-Faria, the university president. Polleys said Mohler-Faria threatened to shut down the paper and urged her to remove the article, saying it was “unconscionable’’ they had refused to do so**. He also said he would forbid administrators from speaking to the newspaper in the future, she said. “Personally, I was furious over the whole thing,’’ said Polleys, a senior who has worked on the paper for three years. “There’s no question he was trying to intimidate us.’’ A university spokesman said Mohler-Faria “certainly encouraged’’ Polleys to remove the article to protect the student’s privacy, but did not demand it. He denied that Mohler-Faria threatened to shut down the paper. “There’s absolutely no question in the university’s mind that the paper has the right to print what it wants,’’ said the spokesman, Bryan Baldwin. “But when there are questions of the validity of facts and when there are questions of the rights to privacy, that deserves a conversation.’’ Administrators had received dozens of complaints about the article, Baldwin said. “He was certainly very concerned, based on the reaction,’’ he said of the college’s president. The controversy also led to the removal of the newspaper’s faculty adviser, David Copeland, amid conflicting accounts of the circumstances. Baldwin said that Copeland, a part-time journalism instructor, indicated he would step down at the end of the academic year of his own accord, in compliance with a rule banning part-time faculty from advising clubs. “In no way, shape, or form was there any pressure for him to step down by the university,’’ he said. Copeland’s position was an exception to the rule, Baldwin said. But Copeland took issue with the university’s account. “I need to state in no uncertain terms: I have not resigned or otherwise left my position as the adviser to The Comment,’’ he wrote in an e-mail to faculty Friday. “Nor do I intend to.’’ Copeland said the newspaper staff voted this fall to have him stay on as adviser for four terms and that he intends “to fulfill that commitment.’’ Media specialists said college administrators are often quick to exert pressure when school newspapers cover sensitive topics. Robert Shibley, senior vice president of the Foundation for Individual Rights in Education, said college administrators often attempt to coerce student journalists to “follow the administration’s preferences.’’ Polleys said the article included one piece of information that the woman did not mention in her speech - the college where the rape occurred. The reporter found that information from the woman’s online profile, she said, and decided to include it because the woman has a relatively common name. Polleys said she is surprised by the anger over the article, noting that students have discarded copies of the newspaper in protest. The event had been publicized and featured a number of students who identified themselves as survivors. “It was a very public event,’’ she said. “She was brave enough to stand in front of 200 people and share her story, and I didn’t think there would be a problem with giving her a greater audience.’’ Polleys said the woman expressed concern that the story would make it easier for her assailant to find her and asked Polleys to remove the online version. But Polleys defended the story and said she would not bow to outside pressure. “I think it would set a dangerous precedent,’’ she said.

### Kizer

#### CP text: expand speech zones

**Kizer:** Kizer, Mary Madison [Professor, Donna Pelham Reeves School of Business] “Restrictive Free Speech Zones and Student Speech Codes at Public Universities. 2015. RP

Under this presumption of public universities being limited forums, any free speech regulations and/or zones “represent an attempt to structure the ‘marketplace of ideas’ so that [the university] functions most effectively” (Davis, 2004, p.276). The university can reasonably regulate speech if it is believed to serve the overall educational purpose. Even though it can be frustrating as applied to the university setting, the Supreme Court also declared that “the First Amendment does not guarantee access to property simply because it is owned or operated by the government” (Perry Educ. Ass’n v. Perry Local Educators Ass’n, 460 U.S. 37 (1983) at 46). If an area is considered a limited forum, such as many universities, officials are allowed to regulate speech based on content. However, universities still must prove the speech regulation is necessary to further their educational purpose. **Using these principles, many public universities have deemed their free speech zones to be limited forums and established very restrictive speech codes**. These policies appear to honor the limitations on government without actually allowing students to openly express their ideas. **The free speech zones and stringent codes are all too often not protectors of student freedom, but rather are censorship** (Davis, 2004). While some legally established and approved limitations to student speech are necessary, labeling unreasonably small and strictly regulated demonstration zones as limited public forums is unconstitutional. As mentioned earlier, the Public Forum Doctrine led to the creation of free speech zones on college campuses. Th**ese free speech zones, also known as demonstration zones, are usually “small and isolated” campus areas where students are allowed “expressive activities”** (Foundation for Individual Rights in Education, 2013). In theory, universities create these zones to allow students a place to speak freely and openly. However, according to the nonprofit Foundation for Individual Rights in Education (FIRE),2 the zones do not always serve this purpose. FIRE characterizes 59% of United States colleges as “red light institutions.” A “red light institution” is one having “at least one policy both clearly and substantially restricting freedom of speech,” as well as speech policies hidden from the public (FIRE). Many of these institutions' officials have created zones taking up less than one percent of the campus, with limited availability during the week and required pre-registration (FIRE). Outside of these zones, campus areas do not allow many free speech rights. In the past two decades, a number of federal court cases have addressed questionable free speech zones in both universities and cities. Many of the decisions have shown that both content regulations within the zones and overly small free speech zones are unconstitutional. These issues and legal decisions are seen in the cases of Forsyth County v. The Nationalist Movement, 505 U.S. 123 (1992) and The University of Cincinnati Chapter of Young Americans for Liberty v. Williams, 2012 WL 2160969 (S.D. Ohio, 2012, unpublished). In 1992, the white supremacist Nationalist Movement attempted to hold a demonstration opposing Martin Luther King, Jr., Day on the steps of the Forsyth County, Georgia, courthouse. Forsyth County, with its history of racial issues and expensive civil rights demonstrations, had enacted Ordinance 34 in 1987. While anyone using the designated speech zone was already required to purchase a permit, this ordinance allowed the county “to adjust the amount to be paid...for the maintenance of public order” (Forsyth County v. The Nationalist Movement, 505 U.S. 123 (1992) at 131, fn.9). The ordinance therefore authorized county officials to make judgments based on how expensive the demonstrations might be. While the Nationalist Movement was assigned extra fees, the fees were based on the amount of time it took to obtain the permit. Nonetheless, the group refused to pay the extra fee and sued Forsyth County for violating their First Amendment rights. The Eleventh Circuit of Appeals had ruled in favor of the Nationalist Movement, holding that “[any] ordinance which charges more than a nominal fee for using public forums for public issue speech is facially unconstitutional” (505 U.S. 123 at 123). The court suspected that Forsyth County had a motivation of maintaining order, and since the ordinance on its face would have authorized a higher fee out of security concerns, the court went on to say that “listener’s reaction to speech is not a content-neutral basis for regulation” and that “speech cannot be...punished or banned, simply because it might offend a hostile mob” (505 U.S. 123 at 123, 135). **The decision of this case indirectly revealed that very rarely should free speech zones actually fall within the limited forum category, and any speech regulations should remain content neutral**. Although this particular case involved a county, universities are also notorious for regulating speech based on content and being opinionated over which groups are allowed to utilize free speech zones. **Moreover, universities frequently make the free speech zones entirely too small and difficult to access**. In 2012 the University of Cincinnati’s Chapter of Young Americans for Liberty (YAL) filed suit against the university, in particular President Gregory Williams, over its restrictive demonstration zones. The YAL representatives asserted that the University had “denied [their] right to circulate freely across the college campus” gathering signatures “...on petitions to place the Ohio Workplace Freedom Amendment on the November 2012 ballot” (University of Cincinnati YAL at page 1 of decision). The students were only allowed to gather signatures within the designated free speech zone, the McMiken Commons Northwest Center, which constituted less than 0.1% of the campus. If the students attempted to get signatures outside of that area, they were threatened with arrest. The university’s speech policy also included a “five to fifteen day notification requirement and prior permission” (University of Cincinnati YAL at 2). After only being able to interact with six students and obtain one signature, the students took this issue to court. The students claimed that the current regulations were “overly broad and facially unconstitutional,” and that the University’s burdening of “all student speech, rather than disruptive or crowd-gathering speech.... is not narrowly tailored to achieve the regulatory interests that the University asserts” (2012 WL at 2). While the university attempted to characterize its free speech zone as a limited public forum, Judge Timothy S. Black ruled in favor of the plaintiffs by issuing an injunction prohibiting the university from enforcing its regulations and deeming that its polices were in fact unconstitutional. As a legal precedent, Black mentioned the decision in Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969), which states that “undifferentiated fear or apprehension of a disturbance is not enough to overcome the right to freedom of expression on a college campus” (Tinker, 393 U.S. at 191). Unfortunately, many schools still use such restrictive policies. **By categorizing public universities as limited public forums, university officials have established not only these small demonstration zones, but also stringent speech codes. Overly broad and restrictive speech codes are common among public college campuses.** Many believe that these stringent codes are necessary to protect students from disagreeable material, giving them a better educational experience. But colleges are meant to be diverse environments, filled with many cultures, differing ideas, and conflicting opinions. Students are meant to communicate with one another, and prohibiting certain students from sharing their viewpoints, even if distasteful, can become unconstitutional. Many colleges create speech and conduct codes that blur the line between oppression and protection, but some students have successfully fought against unreasonable speech policies. In the case of Doe v. University of Michigan, 721 F. Supp. 852 (1989), the Eastern Michigan District Court deemed that an overly broad hate speech code was unconstitutional. In 1988, following years of racial tensions, a policy restricting hate speech was implemented at the University of Michigan. The policy was designed to protect students from discrimination and harassment, and to punish students who victimized others. Unallowable conduct included making jokes about gays and lesbians, racist threats/graffiti, and sexist statements, to name just a few. A psychology graduate student brought the code to court, questioning its constitutionality. He had created a presentation for his class involving “certain controversial theories” discussing the biological differences between sexes and races, and he feared it would be viewed as sexist (Doe v. Michigan, 721 F.Supp. at 858). The United States District Court for the Eastern District of Michigan found that the university’s speech policy was subject to opinions and overly vague. The court mandated that the university could not regulate student speech “because it disagreed with the ideas or messages sought to be conveyed” (721 F.Supp. at 863) or because the speech offended “large numbers of people” (721 F.Supp. at 863). Although this decision only applied to Michigan, it was considered a step towards better free speech policies and a win for students. The court also stated that the “the free and unfettered interplay of competing views is essential to the institution’s educational mission” (721 F.Supp. at 863). **By expanding speech codes as well as free speech zones, public universities would better serve their students with a broader education. Universities could offer better educational opportunities by implementing larger free speech zones categorized as designated forums and by loosening speech codes. Student expression is valuable and should be a focal point in higher education**. Recently, a student movement has fought back against restrictive speech policies. In response, many public institutions of higher education have used settlements as a way to avoid court while still improving free speech experiences for students. Such institutions include Citrus College and Modesto Junior College, both of which have addressed such issues in the past two years; the settlements offered huge improvements for students, including revisions to codes, larger free speech zones, and monetary awards to cover students’ legal fees (New, 2015). This is evidence that free speech is becoming a higher focus for both students and universities, and that policies unfairly restricting freedom of speech may well be considered unlawful by the legal system. Free speech in the public universities can be both confusing and complicated. Although some colleges have already addressed and attempted to resolve the issues, restrictive free speech zones and conduct codes still exist and will continue to be challenged by students. The lines between protection and oppression have become blurred, and students will continue to push for fairer limitations. While every citizen’s and student’s right to expression should have its limitations, the limitations should be fair and legally justified. In order to avoid turning into a dystopian society, the United States must continue to value free speech on public college campuses.

### Deruy

#### Safe spaces for Black students don’t isolate them – it just gives them a potential outlet if they need.

**Deruy:** Deruy, Emily [Contributor, The Atlantic] “The Fine Line Between Safe Space and Segregation.” *The Atlantic.* August 2016. RP

**Where most universities were designed around the needs and lives of white students, she said, and most white students can—and do—still avoid having uncomfortable conversations about race, black students “are never at a shortage” for uncomfortable racial conversations. In other words, white students can often elect not to engage in such conversations, where black students cannot escape them. To carve out a safe space on campus where black students can get support from people who look like them and share similar backgrounds may ultimately help these students feel a sense of belonging and safety. These students are not cloistered away, McMillan Cottom pointed out. They still attend classes, eat in dining halls, and go to sporting events that are campus-wide.** What white people often mean when they argue that creating such spaces is segregation, McMillan Cottom suggested, is that they also want the ability to self-segregate. The idea that black and white students come to campus with the same needs and concerns and deserve the exact same treatment is a “false equivalence,” she said. Black students are far more likely to come from high schools that lack advanced courses, to be low-income, and to be first-generation students from families unfamiliar with the college process.

#### University of Connecticut is the perfect example – they created living spaces just for black men

**Deruy:** Deruy, Emily [Contributor, The Atlantic] “The Fine Line Between Safe Space and Segregation.” *The Atlantic.* August 2016. RP

**That’s one reason another institution, the University of Connecticut, earlier this year announced a living community specifically for black men. Erik Hines, an assistant professor who was set to serve as a faculty advisor to residents, told The Atlantic at the time that the space was in part an attempt to address the fact that black men graduate from college at a lower rate than many of their peers. While graduation rates for white, Latino, and Asian students, as well as black women, are in the 70s and 80s at the school, graduation rates for black men are in the 50s. The school pointed out that young men of all backgrounds will be permitted to apply to the living community, and that the housing isn’t meant to exclude anyone, but to provide a safe space for students who may feel detached from the university community more broadly. The community is an attempt, Hines said, to give black students who may be in majors with just one or two other black students a chance to connect with other people who may feel isolated and may also feel burdened with representing the black community as a whole.**

### Horgan

#### CP text and examples of colleges for pseudoscience PIC [could also be refuse to publish pseudoscience in journals]

**Horgan:** Horgan, John [Contributor, Scientific American Blog Network] “Should Research on Race and IQ Be Banned?” *Scientific American.* May 2013. RP

**The old issue of genes, race and intelligence has exploded once again. The trigger this time is social scientist Jason Richwine, who recently co-authored** [**a study of immigration**](http://www.heritage.org/research/reports/2013/05/the-fiscal-cost-of-unlawful-immigrants-and-amnesty%20to-the-us-taxpayer) **for the Heritage Foundation, a conservative think tank.** The study contended that granting amnesty to illegal immigrants could cost the U.S. more than $5 trillion. After the study's release, [**The Washington Post reported**](http://www.washingtonpost.com/blogs/wonkblog/wp/2013/05/08/heritage-study-co-author-opposed-letting-in-immigrants-with-low-iqs/) **that Richwine asserted in his 2009 Harvard Ph.D. thesis, "**[**IQ and Immigration Policy**](http://books.google.com/books/about/IQ_and_Immigration_Policy.html?id=KvaMQwAACAAJ)**," that the average IQ of U.S. immigrants "is substantially lower than that of the white native population.**" Arguing that “the totality of the evidence suggests a genetic component to group differences in IQ," Richwine added, “No one knows whether Hispanics will ever reach IQ parity with whites, but the prediction that new Hispanic immigrants will have low-IQ children and grandchildren is difficult to argue against.” Richwine proposed that IQ be considered as a factor for screening immigrants. **So there it is, a neo-eugenics program, proposed by a Harvard-minted scholar employed by a prominent think tank.** The Heritage Foundation quickly distanced itself from Richwine, stating that the claims of his Harvard thesis "in no way reflect the positions of The Heritage Foundation." Richwine resigned from the foundation last week. Some pundits [applauded Richwine's downfall](http://www.huffingtonpost.com/janet-murguia/jason-richwines-resignati_b_3267730.html) and attacked his Harvard research. I especially like [how The Atlantic blogger Ta-Nehisi Coates](http://www.theatlantic.com/national/archive/2013/05/what-we-mean-when-we-say-race-is-a-social-construct/275872/) compiled historical evidence that race is more a social than biological phenomenon. **Others defended the premise of Richwine's thesis—that genes account for at least some of the differences in IQ scores between different ethnic groups—and deplored attacks on him as threats to freedom of speech and scientific inquiry.** [Journalist Andrew Sullivan](http://dish.andrewsullivan.com/2013/05/14/is-christopher-jencks-a-racist/) says that the "effective firing" of Richwine "should immediately send up red flags about intellectual freedom." **These are the same sorts of things said in 1994 when Harvard researchers Richard Herrnstein and Charles Murray argued in The Bell Curve that programs to boost black academic performance might be futile because blacks are innately less intelligent than whites; and in 2007 when** [**geneticist and Nobel laureate James Watson**](http://www.scientificamerican.com/blog/post.cfm?id=james-watson-and-eugenics) **ascribed Africa’s social problems to Africans' genetic inferiority**. (Watson is also a former Harvard professor. What is it with Harvard? Could there be something in the drinking water?) I'm torn over how to respond to research on race and intelligence. **Part of me wants to scientifically rebut the IQ-related claims of Herrnstein, Murray, Watson and Richwine**. For example, to my mind the single most important finding related to the debate over IQ and heredity is the dramatic rise in IQ scores over the past century. [This so-called Flynn effect](http://www.scientificamerican.com/article.cfm?id=how-we-know-humans-getting-smarter-flynn-excerpt), which was discovered by psychologist James Flynn, undercuts claims that intelligence stems primarily from nature and not nurture. **But another part of me wonders whether research on race and intelligence—given the persistence of racism in the U.S. and elsewhere--should simply be banned. I don't say this lightly. For the most part, I am a hard-core defender of freedom of speech and science. But research on race and intelligence—no matter what its conclusions are—seems to me to have no redeeming value.**

#### Racist pseudoscience conducted by colleges becomes accepted and legitimized when heard publicly– bans are key.

**Horgan:** Horgan, John [Contributor, Scientific American Blog Network] “Should Research on Race and IQ Be Banned?” *Scientific American.* May 2013. RP

-Also explains what the CP does

**Far from it. The claims of researchers like Murray, Herrnstein and Richwine could easily become self-fulfilling, by bolstering the confirmation bias of racists and by convincing minority children, their parents and teachers that the children are innately, immutably inferior**. (See Post-postscript below.) Why, given all the world’s problems and needs, would someone choose to investigate this thesis? What good could come of it? **Are we really going to base policies on immigration, education and other social programs on allegedly innate racial differences? Not even the Heritage Foundation advocates a return to such eugenicist policies. Perhaps instead of arguing over the evidence for or against theories linking race and IQ we should see them as simply irrelevant to serious intellectual discourse**. I'm sympathetic toward the position spelled out by Noam Chomsky in his usual blunt fashion in his 1987 book [Language and Problems of Knowledge](http://www.amazon.com/Language-Problems-Knowledge-Lectures-Linguistics/dp/0262530708): "Surely people differ in their biologically determined qualities. The world would be too horrible to contemplate if they did not. But discovery of a correlation between some of these qualities is of no scientific interest and of no social significance, except to racists, sexists and the like. Those who argue that there is a correlation between race and IQ and those who deny this claim are contributing to racism and other disorders, because what they are saying is based on the assumption that the answer to the question makes a difference; it does not, except to racists, sexists and the like." **Scientists** [**and pundits**](http://www.slate.com/articles/health_and_science/human_nature/features/2007/created_equal/liberalcreationism.html) **who insist on recycling racial theories of intelligence portray themselves as courageous defenders of scientific truth. I see them not as heroes but as bullies, picking on those who are already getting a raw deal in our society. It's time to put these destructive theories to rest once and for all**. Irony Alert: It just occurred to me that two recent films, The Great Gatsby and Django Unchained, feature villains who spout pseudo-scientific theories of white superiority. The films imply that these theories are ludicrous relics of our racist past and that no modern person could possibly believe them. If only. \*Clarification: Some readers may wonder what I mean by "ban," so let me spell it out. I envision a federal prohibition against speech or publications supporting racial theories of intelligence. All papers, books and other documents advocating such theories will be burned, deleted or otherwise destroyed.Those who continue espousing such theories either publicly or privately (as determined by monitoring of email, phone calls or other communications) will be detained indefinitely in Guantanamo until or unless a secret tribunal overseen by me says they have expressed sufficient remorse and can be released. \*\*Clarification clarification: The above clarification has left some readers puzzling over whether my whole post was a joke. The clarification is obviously (I thought) sarcastic, and the rest of the post is obviously (I thought) deadly earnest. So what do I really mean by a ban? Here's one possibility. **Institutional review boards (IRBs), which must approve research involving human subjects carried out by universities and other organizations, should reject proposed research that will promote racial theories of intelligence, because the harm of such research--which fosters racism even if not motivated by racism--far outweighs any alleged benefits. Employing IRBs would be fitting, since they** [**were formed in part as a response**](http://en.wikipedia.org/wiki/Institutional_review_board) **to the one of the most notorious examples of racist research in history, the Tuskegee Syphilis Study, which was carried out by the U.S. Public Health Service from 1932 to 1972.** Post-Postscript: Scientific American has just published two excellent article on "stereotype threat," which is a kind of reverse placebo--or "nocebo"--effect; victims of negative stereotypes may underperform because they believe the stereotype. See [here](http://www.scientificamerican.com/article.cfm?id=psychologists-steel-minority-students-against-fear-failure&WT.mc_id=SA_SADAlert_062013) and [here](http://www.scientificamerican.com/article.cfm?id=stereotype-interventions-expel-from-classrooms-across-country). Some clever critics of my post might accuse me of hypocrisy, because these articles present esearch on race and and should be subject to my proposed ban. Obviously I'm trying to eliminate research that reinforces rather than counteracting racism. I mean, Duh.

### Delgado and Stefancic – Hate Speech in Cyberspace

#### Legal sanctions against cyberbullying deter, and counterspeech makes zero sense in this context

**Delgado and Stefancic:** Richard Delgado and Jean Stefancic [Delgado is Charles Inglis Thomson Professor of Law, University of Colorado. J.D., U. California-Berkeley, 1974. Stefancic is the Technical Services Librarian, University of San Francisco School of Law. M.L.S., Simmons College, 1963; M.A., University of San Francisco, 1989. “Hate Speech in Cyberspace.” *Wake Forest Law Review*. Summer 2014. RP

**Some of the usual means that First Amendment devotees urge to counter ordinary - spoken or written - hate speech are even less promising with the Internet variety. Talking back to the aggressor (the favorite approach of First Amendment absolutists) is impossible for speech that is anonymous or that occurs in a forum of the like-minded**. The same is true for the suggestion that victims of hate speech should tolerate it because it serves as a pressure valve that enables hate speakers to harmlessly air feelings that, if bottled up, could explode in even more harmful forms later. n125 **The idea that racist feelings will cease once a speaker expresses them is unfounded even with ordinary speech; n126 with the Internet variety, it holds even less. Most Internet speech, as mentioned, takes place anonymously or among the like-minded. The first tirade eggs an audience on. Far from producing a pacified speaker and audience, the speech incites another and another. A chorus of "right ons" or "likes" encourages the speaker to believe that his or her attitude is widely shared, when it in fact is not**. A further riposte from the free speech side is that minorities ought to toughen up and not run to the authorities every time they hear something that offends their feelings. n129 But it is hard to put this approach into effect with hate speech in cyberspace, since one is often unaware that it is taking place or that one's identity or good name has been impugned. **And with the kind that shows up suddenly, unbidden on one's computer screen, one has little opportunity to harden oneself in advance.** Moreover, this approach places the burden of countering hate speech on those who bear the brunt of it in the first place. A final rejoinder is what is known as the "bellwether" argument, which holds that the racist who is known is better - that is, safer - than one who is not known. This argument, even with ordinary speech, is flawed, since it ignores a third alternative - that the racist who is deterred by firm application of rules and norms is even safer than one who spews it constantly. n132 With cyberspeech the bellwether argument holds with even less force than it does with ordinary speech, since much of Internet speech proceeds in privacy, arriving suddenly and without identifying the source. n133

#### Cyberbullying is protected constitutionally.

**Delgado and Stefancic:** Richard Delgado and Jean Stefancic [Delgado is Charles Inglis Thomson Professor of Law, University of Colorado. J.D., U. California-Berkeley, 1974. Stefancic is the Technical Services Librarian, University of San Francisco School of Law. M.L.S., Simmons College, 1963; M.A., University of San Francisco, 1989. “Hate Speech in Cyberspace.” *Wake Forest Law Review*. Summer 2014. RP

**Hate speech has received a tepid response from the lower courts. Unless the speech is dramatic enough to support a sui generis prohibition (like cross burning) or resembles an existing exception to First Amendment coverage, such as words of threat, defamation, intentional infliction of emotional distress, or a statutory remedy such as speech that creates a hostile workplace, courts are apt to find hate speech constitutionally protected. Since courts believe that Internet speech qualifies for constitutional protection, courts are likely to look unfavorably at legislative efforts to limit speech in cyberspace.**

### Jaklevic

#### School shootings instill a politics of fear that makes meaningful educational engagement impossible.

**Jaklevic:** Jaklevic, Jennifer [Contributor, Odyssey] “My Rational Fear Of School Shootings As A Student.” Odyssey. March 2016. RP

There were over 50 school shootings in 2015. This includes both K-12 districts and colleges. We are three months into 2016, and there have already been [10 school shootings](http://everytownresearch.org/school-shootings). This is a very scary concept to me. It's March; how have there already been this many incidents? Of these 10 shootings, only one has been fatal. On February 12, 2016, a 15-year-old girl shot and killed her girlfriend before killing herself. Five of these shootings resulted in non life-threatening injuries (one was unintentional). Four involved a gun being fired without any injuries. Regardless of any of these results, there were guns in schools. The guns were fired. Unfortunately, this year has only just begun. **While I sit here and pray that there are no more school shootings, I consider the horrific reality that history repeats itself, and that school shootings have become some sort of sick and twisted trend.** My biggest fear used to be of heights. I never went on roller coasters. I was deathly afraid of ski lifts. The thought of flying really didn't thrill me either. I'm still afraid of heights. But this is no longer my biggest fear. For a year or two in high school, I guiltily admit that the zombie apocalypse was my biggest fear. I'd seen the movies (of my own choice), but just the thought that one day a virus could break out and end the human race scared me tremendously. This fear still ranks pretty high on my scale of fears, but no longer is number one. **As a college student, my biggest fear is a school shooting. I fear any person who can access a gun and use it for malicious intent. When the Columbine massacre occurred**, I was a year and a half old. Obviously, I had no idea that anything had happened until many years later. I remember talking to somebody who was reading a book that featured diary pages from the first victim of the Columbine shooting -- Rachel Scott. Since this conversation, I've learned a lot more about the shooting, but two facts clearly stick out in my mind; the bullet that killed Rachel struck a hole through her diary, and her brother survived by laying in the pools of blood of other students. When the Virginia Tech massacre occurred, I was nine and a half years old. Still, I was too young to hear about and remember anything. To this day, I still know very little about this event. But it's one of three school massacres that come to mind. The first time I realized that this could happen anywhere was on December 14, 2012. **I was a sophomore in high school, and I clearly remember sitting in my health classroom on that date and discussing what was happening as it happened. This was the day of the Sandy Hook Elementary School Massacre. To this day, the thought of this event brings me such great sadness. This was the first time in my life (that I had known of) that a school shooting involved elementary school kids. Twenty children of ages six and seven were shot and killed. How could somebody do this to children? These kids had barely experienced life when it was suddenly taken from them**. At this time I realized that guns know no age. Guns don't kill people; people do. A gun can be fired at an 80-year-old just the same as it can a 16-year-old or a 5-year-old. The thought of this scares the utter crap out of me. **As a college student, I realize for the first time how vulnerable I am. I'm only an hour and a half away from home, but I no longer live in the safety of my own house. I live in a dorm building on a college campus that has an enrollment of about 10,000 students. Of these students, I probably know a maximum of 50 people. The other 9,950 people are strangers. I know this was bound to be the case regardless of what college I attended. There's no possible way I could know everybody on campus, and I never expected to. But the fact that there are 9,950 people who I don't know anything about is pretty scary. Now, I am in no way implying that I have encountered anybody that I fear might bring out a gun on campus. In fact, everybody I have ever encountered on my college campus has been nothing but friendly. I love the school I attend. But this doesn't mean that I fear the possibility any less. I know the statistics and it has become evident that a school shooting can happen anywhere; preschool, elementary school, high school or college**. This is the scary reality of the world today. How sad is it that any and every student has to consider the possibility of somebody entering their place of education with a gun? We have evacuation drills and lockdown drills, but don't ever actually think that we one day might have to evacuate or lock down. So what happens when something like this actually occurs? We do what we are taught in the drills? Or we panic? I don't know the answer to this question. And I hope I am never put in the position where I have to know the answer. I used to be afraid of monsters under my bed, and jellyfish, and heights and zombies. These were all fears that could be addressed and overcome. Now, I'm afraid of other people. And there is no solution for that.

### Vespa

#### School shootings are on the decline now

**Vespa:** Vespa, Matt [Matt Vespa is a correspondent for MRCTV and contributor to its blog.] “Mass Shootings Aren't On The Rise, Neither Are Victims Of School Shootings.” June 2014. RP

**Tragically, America experienced two more shootings this week in Las Vegasu and at a school in Oregon. Yet, unlike the CNN headline - "This is becoming the norm -" mass shootings, including the ones at school, aren't on the rise. In fact, America is less violent than it's ever been in nearly 20 years. As CNSNews reported earlier, gun-related homicides dropped 39% between 1993-2011; Pew noted a 49% drop between 1993-2010.** In the first six months of 2013, violent crime murders declined 6.9%, rapes declined 10.6%, and aggravated assaults decreased by 6.6%, according to the FBI. In all, we're holding steady on a 25-year trend where violent crime is declining. James Alan Fox, a criminologist at Northwestern University, has been tracking mass shootings with four or more fatalities since 1976. It wasn't surprising to see that mass shootings aren't on the rise. In fact, the rate of such incidents has pretty much remained flat since the 1970s. **There hasn't been a rise in the number of school shooting victims either, according to a new report conducted by the Bureau of Justice Statistics and the National Center for Education Statistics: Since the Sandy Hook incident, preliminary counts from media reports indicate that there were 17 school-associated violent deaths between December 15, 2012, and November 14, 2013; of these deaths, 11 were homicides and 6 were suicides**. Six of the victims were identified as being between the ages of 5 and 18. **Between July 1, 2010 and June 30, 2011, there were 31 school-associated violent deaths in elementary and secondary schools in the United States Of the 31 student, staff, and nonstudent school- associated violent deaths occurring between July 1, 2010, and June 30, 2011, there were 25 homicide and 6 suicides. Data for school-associated violent deaths for the 2010-11 school year are preliminary until interviews with law enforcement personnel have been completed.** The percentage of youth homicides occurring at school remained at less than 2 percent of the total number of youth homicides over all available survey years, even though the absolute number of homicides of school-age youth at school varied to some degree across the years. Between the 1992-93 and 2010-11 school years, from 1 to 10 school-age youth committed suicide at school each year, with no consistent pattern of increase or decrease in the number of suicides. The percentage of youth suicides occurring at school remained at less than 1 percent of the total number of youth suicides over all available survey years. While tragic, these aren't levels that suggest epidemic levels of violence at our schools; they're not shooting galleries either. In fact, if you look at the chart, there's a downward trend. Regardless of the statistics and the fact, the rabid anti-gun left will continue to peddle unadulterated drivel about gun violence. Case in point, Bloomberg's Everytown for Gun Safety's made a map tracking school shootings since Newtown and found 74 incidents since Newtown. There are a few problems. First, some shootings included were gang-related off campus. Of the 74 incidents listed by Everytown, 35 occurred [sic] on or near a college campus.\*\*) The map also includes nonfatal shootings, including accidental discharges and at least four events in which no one was injured at all. And some of its items qualify as "school shootings" only under a rather broad understanding of the phrase. While this killing, for example, did take place in an elementary school parking lot, it happened at night, long after the students and teachers had gone home. The victim was 19. This much is clear: If you're wondering where kids are likely to die, the answer plainly isn't a classroom. **America is actually less violent that it was twenty years ago; gun-related homicides are down; school and mass shootings are either on the decline or have remained flat in terms of frequency. In fact, since 2012, experts have noted mass shootings aren't on the rise.**

### Ehrenfreund

#### Gun violence is low now

**Ehrenfreund:** Ehrenfreund, Max [Writer and contributor, Washington Post] “We’ve had a massive decline in gun violence in the United States. Here’s why.” The Washington Post. December 2015. RP

Premeditated mass shootings in public places are happening more often, some researchers say, plunging towns and cities into grief and riveting the attention of a horrified nation**. In general, though, fewer Americans are dying as a result of gun violence — a shift that began about two decades ago. In 1993, there were seven homicides by firearm for every 100,000 Americans, according to a Pew Research Center analysis of data from the Centers for Disease Control and Prevention. By 2013, that figure had fallen by nearly half, to 3.6 — a total of 11,208 firearm homicides. The number of victims of crimes involving guns that did not result in death (such as robberies) declined even more precipitously, from 725 per 100,000 people in 1993 to 175 in 2013. Older data suggests that gun violence might have been even more widespread previously. The rate of murder and manslaughter excluding negligence reached an apex in 1980, according to the FBI. That year, there were 10.8 willful killings per 100,000 people. Although not a perfect measure of the overall rate of gun violence, the decline in the rate of murder and manslaughter is suggestive: Two in three homicides these days are committed with guns. This decline in gun violence is part of an overall decline in violent crime. According to the FBI's data, the national rate of violent crime has decreased 49 percent since its apex in 1991**. Even as a certain type of mass shooting is apparently becoming more frequent, America has become a much less violent place. Much of the decline in violence is still unexplained, but researchers have identified several reasons for the shift. Here are five.

### NCSE

#### Climate denial shoves out more productive classroom discussions and misinforms

**NCSE:** National Center for Science Education [Organization dedicated to scientific education in classrooms] “Climate Change Denial Is Affecting Education.” No date. RP

**Climate change denial is already threatening the integrity of science education in formal and informal education settings. In the public schools, such threats are primarily due to laws adopted or considered at the level of state government, policies adopted or considered at the level of the local school district, and actions adopted or considered at the level of the individual classroom, where teachers may either deny climate change themselves or encounter pressure from climate change deniers in the community**. The following is a selection of recent (from 2007 to 2011) incidents, intended to be illustrative rather than comprehensive; NCSE is now routinely monitoring cases of climate change denial affecting education. In **2010, South Dakota’s legislature adopted House Concurrent Resolution 1009, in which all three of the pillars of climate change denial were on display. The resolution described climate change as “a scientific theory rather than a proven fact” and cited purported evidence against global warming suggested that the scientific consensus on climate change was due to “political and philosophical viewpoints which have complicated and prejudiced the scientific investigation of global warming phenomena” called for “balanced teaching of global warming in the public schools of South Dakota”** As a resolution, HCR 1009 was non-binding, merely expressing the legislature’s view and not requiring teachers in South Dakota to teach differently. But it surely sent a message to those teachers. Additionally, climate change is now often included along with evolution in lists of “controversial” topics in state legislation. For example, the so-called Louisiana Science Education Act, enacted in 2008, called on education administrators to help to promote “thinking skills, logical analysis, and open and objective discussion of scientific theories being studied including, but not limited to, evolution, the origins of life, global warming, and human cloning.” These four topics were described as controversial in the original draft of the legislation. Dozens of such “academic freedom” bills have been introduced in state legislatures over the past decade, although successfully only in Louisiana. Since 2008, antievolutionists in Louisiana have reportedly invoked the law to support proposals to teach creationism in at least two parishes — Livingston and Tangipahoa — and to attack the treatment of evolution in biology textbooks proposed for adoption by the state. As the topic of climate change becomes increasingly prevalent in science classrooms, it is likely that climate change deniers in Louisiana will similarly invoke the law to support proposals to teach climate change denial or to downplay the treatment of climate change in science textbooks. A further locus of climate change denial is state science standards. Since the 1990s, state science standards have been increasingly important in public education in the United States. Standards provide guidelines for local school districts to follow in developing their science curricula; they determine the content of statewide science examinations; and they are consulted by textbook publishers in developing their science textbooks. They can also provide a bulwark for teachers and administrators facing complaints about the content of the curriculum. But climate change deniers often attempt to undermine the treatment of climate change when standards are updated. In Texas in 2009, for example, a highly politicized state board of education revised a benchmark for Earth and Space Science from “analyze the changes in Earth's atmosphere through time” to “analyze the changes in Earth's atmosphere that could have occurred through time” and added a benchmark for Environmental Systems requiring students to “[a]nalyze and evaluate different views on the existence of global warming,” as NCSE's Steven Newton reported in The Earth Scientist (2009). The chair of the board at the time was quoted as explaining, “Conservatives like me think the evidence [for human contributions to global warming] is a bunch of hooey.” In 2010, a group of local parents in Mesa County, Colorado, petitioned the school district to stop teaching about climate change at all. Here, too, all three pillars of climate change denial were at work. The leader of the petition drive, according: told the school board that climate change “is not a proven scientific theory. There is not evidence to support it” told the newspaper that she was impelled to start the petition when “parents approached her to complain that their children couldn’t freely express their conservative values in class” argued that “if the subject is going to be taught, the ‘other side’ should be presented so that students aren’t subjected to a frightening untruth” In the end, the school board declined to act on the petition, and thanks to the concerted action of concerned parents, teachers, and scientists, climate change is still part of the local science curriculum. In 2011, the Los Alamitos, California, Unified School District adopted a policy requiring teachers addressing any controversial issue to use material that offers “a balance of viewpoints and encourages students to examine each side of the issue.” The policy was adopted at the behest of a district trustee who was concerned in particular about a new Advanced Placement class in environmental science, which addressed climate change. Interviewed by the Orange County Register (May 14, 2011), he managed to repeat all three pillars of climate change denial: There are two clearly divergent opinions on global warming ... There are those who believe that global warming is a fact, created by man’s impact on the environment and the consequences will be devastating. There are others on the conservative side who believe it’s much ado about nothing. It’s overhyped and politically motivated, and the science is not solid, and there’s room for more studies. ... On this particular issue, I’m not pushing my view. I just want the kids to be presented with balance. The adoption of the policy provoked a controversy in the district, and even attracted international attention. Subsequently, thanks to the action of concerned parents and teachers, the policy was revised (with input from NCSE). Instead of requiring teachers to present “each side of the issue,” regardless of its scientific merit, the new policy instructs that teachers to “[r]epresent facts and concepts of controversial issues from multiple perspectives to ensure that students develop critical thinking and problem-solving skills.” The teachers in the district regarded the revised policy as no longer requiring them to compromise the integrity of climate education. In 2007, in Federal Way, Washington, a local parent objected to a classroom screening of An Inconvenient Truth, the 2006 documentary about former United States Vice President Al Gore’s campaign to educate citizens about climate change. The parent explained his concern to the Seattle Post-Intelligencer ( January 10, 2007): “The Bible says that in the end times everything will burn up, but that perspective isn’t in the DVD.” The Federal Way School Board then adopted a policy that required any teacher who screened the film to present an opposing view. The policy was quickly abandoned, however. As the Seattle Times ( January 24, 2007) reported “Dozens of people showed up at Tuesday’s meeting, many of them concerned about the board’s view of the film as controversial and therefore subject to a district policy that requires teachers to present other points of view. In remarks reminiscent of earlier national debates on evolution, residents told the board that, as far as they were concerned, there was no other valid, scientific perspective they could present to students on global warming — apart from the view, presented in the film, that global warming is caused by humans.” In 2011, after a teacher in California’s San Francisco Bay area showed a video about climate change to her middle school science class, a parent complained, protesting that showing the video was “brainwashing [the students] into believing anthropogenic global warming is a fact, not a theory.” To rectify the problem, the parent demanded that the school host a debate in front of all students in the grade, in which a climate change denier would present a case against the scientific consensus. The district administration agreed to the demand. **Asked by the teachers in the school for help, NCSE explained that such a debate would be pedagogically inappropriate, misleading students about the nature of science: science is settled not in a debate on a stage, but in the scientific literature**. (Significantly, creationists, like climate change deniers, are often eager to propose debates: several articles in Reports of the National Center for Science Education 24:6 discuss (/rncse/24/6) the counterproductive nature of such debates, although without a focus on the K-12 classroom.) **In the end, the district heeded these concerns and canceled the debate.** These incidents at the classroom level are doubtless just the tip of the iceberg: with over 15,000 local school districts across the United States, it is difficult to know exactly how prevalent attacks on climate change education are. Two recent informal surveys conducted in 2011 offer a degree of insight. In a poll of science educators conducted by the National Science Teachers Association, although 60% of respondents reported that they were not concerned about how climate change is taught in their school, 82% reported having faced skepticism about climate change and climate change education from students, 54% reported having faced such skepticism from parents, and 26% reported having faced such skepticism from administrators. In a poll of science educators conducted by the National Earth Science Teachers Association, although only 5% of respondents reported that they were required to teach “both sides” of climate change, 36% reported that they “have been influenced in some way” to do so, and 25 to 30% reported that students, parents, administrators, or community members have disputed that climate change is happening or is the result of human activity. A rigorous national survey of the prevalence and nature of climate change skepticism in the classroom — such as that conducted with regard to evolution by Michael B. Berkman, Julianna Sandell Pacheco, and Eric Plutzer, published in PLoS Biology in 2008 — apparently remains to be performed. In 2007, there were allegations that officials at the Smithsonian’s Natural Museum of Natural History downplayed climate change in its 2006 exhibit “Arctic: A Friend Acting Strangely” (in order to avoid criticism from climate change deniers in Congress and the George W. Bush administration. According), internal documents and correspondence revealed that the museum’s director “ordered last-minute changes in the exhibit’s script to add ‘scientific uncertainty’ about climate change.” Although the director of the museum told the Post that “there was no political pressure,” he also acknowledged taking a cautious approach “because it had the words ‘climate change,’ which is a politically sensitive issue.” A NASA scientist involved with the development of the exhibit commented, “I never felt that as a scientist, I was pressured to change any of the input,” adding, “The real question is what happened at the highest level after that input came in. That I don’t know.” In 2009, the San Diego Zoo decided to make climate change the theme of its 2010 calendar, which was distributed to almost a quarter of a million subscribers to its Zoonooz magazine. Indignant climate change deniers “called and sent letters and e-mails criticizing the zoo for taking a position on a topic that has been debated from San Diego to Shanghai,” the San Diego Union- Tribune (November 25, 2009) reported. The managing editor of the magazine summarized their complaints: “we are reporting on it in a way that makes human beings the ones who are causing it, and kind of the ‘bad guys.’” “The zoo isn’t backing down,” the Union-Tribune explained, “and instead may be stepping more into the realm of political discourse as it strengthens its identity as a conservation organization.” The director of applied animal ecology at the zoo’s Institute for Conservation Research told the newspaper, “When there’s good, sound science behind things, we want to step up and let people know and even advocate for change.” The Zoological Society of San Diego, which operates the zoo, officially recognizes “the substantial and persuasive data on global climate change and its ramifications for endangered wildlife and habitats.”

### Foran

#### Denial of climate change legitimizes it as a political ideology, which makes change impossible

**Foran:** Foran, Clare [Contributor, The Atlantic] “Donald Trump and the Triumph of Climate- Change Denial.” *The Atlantic.* December 2016. RP

**Denial of the broad scientific consensus that human activity is the primary cause of global warming could become a guiding principle of Donald Trump’s presidential administration**. Though it’s difficult to pin down exactly what Trump thinks about climate change, he has a well-established track record of skepticism and denial. He has called global warming a “hoax,” insisted while campaigning for the Republican nomination that he’s “not a big believer in man-made climate change,” and recently suggested that “nobody really knows” if climate change exists. Trump also plans to nominate Republicans to lead the Environmental Protection Agency and the Energy Department who have expressed skepticism toward the scientific agreement on human-caused global warming. **Indeed, Trump’s election is a triumph of climate denial, and will elevate him to the top of a Republican Party where prominent elected officials have publicly rejected the climate consensus**. It’s not that the presidential election was a referendum on global warming. **Climate change barely came up during the presidential debates, and voters rated the environment as a far less pressing concern than issues like the economy, terrorism, and health care. But that relative lack of concern signals that voters have not prioritized action on climate change, if they want any action taken at all. Trump’s victory sends a message that failing to embrace climate science still isn’t disqualifying for a presidential candidate, even as scientists warn that the devastating consequences of global warming are under way and expected to intensify in the years ahead. If Trump fails to take climate change seriously, the federal government may do little to address the threat of a warming planet in the next four years. A presidential administration hostile to climate science also threatens to deepen, or at the very least prolong, the skepticism that already exists in American political life**. “If the Trump administration continues to push the false claim that global warming is a hoax, not happening, not human caused, or not a serious problem, I’d expect many conservative Republican voters to follow their lead,” said Anthony Leiserowitz, the director of Yale University’s Program on Climate Change Communication. A presidential administration hostile to climate science also threatens to deepen the skepticism that already exists in American political life. **The entrenchment of climate-science denial is one of the ways the United States appears to be exceptional relative to the rest of the world. A comparative 2015 study of nine conservative political parties in countries such as Canada, Germany, and Spain concluded that “the U.S. Republican Party is an anomaly in denying anthropogenic climate change.”** Meanwhile, Americans were least likely to agree that climate change is largely the result of human activity in a 2014 survey of 20 countries, including China, India, Australia, and Great Britain. Scientific reality does not seem to have escaped the distorting influence of political polarization in the United States. A paper published in Environment earlier this year suggests that as the Tea Party pushed the Republican Party further to the political right, it helped solidify skepticism of man-made climate change within the GOP. That happened as the Tea Party incorporated “anti- environmentalism and climate-change denial into its agenda,” the authors write, and subsequently became part of a broader “denial countermovement” made up of fossil-fuel companies as well as conservative think tanks and media outlets. As the ideological divide between Republicans and Democrats has widened, so has the partisan divide over climate change. Scientific evidence that human activity is the leading cause of global warming has continued to accumulate in recent years, and the evidence for man-made climate change is now overwhelming. In spite of that, Republicans are slightly less convinced than they were a decade and a half ago that the Earth is getting warmer as a result of human activity. Democrats have moved in the opposite direction and become more likely to say that man-made climate change is real. This year, Gallup found that while 85 percent of Democrats believe human activity has lead to higher temperatures, only 38 percent of Republicans agree. In a deeply divided country, adopting views on climate change that conflict with scientific evidence can actually be a rational choice. Liberals and conservatives frequently spend time with like-minded individuals, and people across the political spectrum may have a better chance of fitting in if they embrace shared partisan beliefs—regardless of whether those beliefs contradict scientific fact. This helps explain why highly educated Republicans are actually more likely to reject climate science. Yale University professor Dan Kahan put it this way in a 2012 Nature article: For members of the public, being right or wrong about climate-change science will have no impact. Nothing they do as individual consumers or individual voters will meaningfully affect the risks posed by climate change. Yet the impact of taking a position that conflicts with their cultural group could be disastrous. ... Positions on climate change have come to signify the kind of person one is. People whose beliefs are at odds with those of the people with whom they share their basic cultural commitments risk being labelled as weird and obnoxious in the eyes of those on whom they depend for social and financial support. The complexity of climate science may have made it easier for global warming to get caught up in partisan politics as well. Voters look to the positions adopted by their political party as a kind of mental shortcut when deciding what to make of complicated subjects such as climate change, according to research from Cynthia Rugeley of the University of Minnesota, Duluth, and John David Gerlach of Western Carolina University. **That means that if Trump continues to voice climate skepticism after taking office, he could further cement skepticism among conservative voters. “I think it will reinforce climate denial among those who already doubt its existence. To that extent, yes, it will deepen denia**l,” Rugeley said in an interview. The power and influence of corporations relative to the government might also help explain why skepticism has thrived. An ideological preference for free markets may make some politicians and voters in the United States more sympathetic to arguments that environmental regulations will hurt the private sector—even if those arguments are used to dismiss climate science. According to Matthew Paterson, a professor of international politics at the University of Manchester in England, skepticism over government intervention might help explain why climate skepticism also seems relatively entrenched in Anglo-Saxon countries such as Great Britain and Australia, though to lesser degrees there than in the United States. **Fossil-fuel interests, in particular, have managed to inject doubt into the climate debate in the United States, Paterson argues, by “funding deniers, and anti-climate politicians, and giving them a public voice.”** The more voters are skeptical of man-made climate change, the easier it may be for politicians to justify inaction. It’s impossible to predict what Trump will do in office, but he already appears poised to dismantle President Obama’s agenda to combat climate change. He also seems willing to fill his administration with individuals who have cast doubt on the scientific consensus. Trump wants Scott Pruitt, the Oklahoma attorney general, to serve as administrator of the Environmental Protection Agency. Pruitt recently co-wrote an article claiming that scientists “disagree about the degree and extent of global warming and its connection to the actions of mankind.” Trump’s choice to run the Energy Department, former Texas Governor Rick Perry, has claimed “the science is not settled” on climate change. And his pick to lead the Interior Department is Republican Representative Ryan Zinke of Montana, who has reportedly said that global warming is “not a hoax, but it’s not proven science either.” **Despite significant pockets of skepticism and denial, particularly among conservative Republicans, there are plenty of Americans across the political spectrum who believe that man-made climate change exists.** Gallup recently found that a majority of Americans believe human activity is causing global warming, and feel worried about the rise in temperatures. Concern over climate change increased among Democrats and Republicans from 2015 to 2016 with 40 percent of Republicans and 84 percent of Democrats reporting concern this year. If that concern continues to increase, skepticism may decline over time among American voters. **Whether skepticism dissipates or intensifies may depend in part on the actions of the Trump administration over the next four years**. If Trump makes climate science and policy a high-profile target, he might provoke a backlash among moderate Republicans who do believe global warming is a serious problem. But skepticism within the GOP could intensify if Trump’s administration publicly misrepresents climate science and dismisses efforts to combat global warming as an expensive waste of time. If that happens, Democrats and liberal activists will counterattack, a dynamic that might cause partisan attitudes to harden further. That could leave the political debate over global warming more fractured than ever.

### Williams

#### Campuses are shutting down climate denial now – University of Colorado proves.

**Williams:** Williams, Thomas D. [PhD] “University of Colorado Bans Free Inquiry of Students Questioning Global Warming.” September 2016. RP

**Last week, three professors co-teaching a course titled “Medical Humanities in the Digital Age” emailed a statement to all students informing them that anthropogenic climate change is not up for debate in their course. “We will not, at any time, debate the science of climate change, nor will the ‘other side’ of the climate change debate be taught or discussed in this course,” the professors said in their letter obtained by The College Fix.** Regarding those inquisitive students who would like to discuss the issue rather than blindly accepting the global warming dogma, the professors “respectfully ask that you do not take this course.” “The point of departure for this course is based on the scientific premise that human induced climate change is valid and occurring,” the letters states. The letter, signed by course instructors Rebecca Laroche, Wendy Haggren and Eileen Skahill, was sent in response to concerns expressed by several students after watching the first online lecture about the impacts of climate change. **The professors, backed by University Communications Director Tom Hutton, said that the ban on debate even extends to discussion among students in the online forums.** Students are also forbidden from using outside sources for research in the course, and may only reference materials that have been approved by the Intergovernmental Panel on Climate Change. **The decision by the University of Colorado to eliminate free inquiry came hard on the heels of the University of Chicago’s contrary decision to encourage debate and discussion, even on unpopular subject**s. In an August letter to incoming freshmen, Chicago’s Dean of Students Jay Ellison reiterated the University’s “commitment to freedom of inquiry and expression” against the restrictive political correctness codes in force on many U.S. college campuses. **Countering the trend toward less freedom of expression in higher education, Chicago stated that its commitment to academic freedom “means that we do not support so-called ‘trigger warnings,’ we do not cancel invited speakers because their topics might prove controversial, and we do not condone the creation of intellectual ‘safe spaces’ where individuals can retreat from ideas and perspectives at odds with their own.**” In other words, if you are afraid of others disagreeing with you or challenging your ideas, then Chicago is not for you. “You will find that we expect members of our community to be engaged in rigorous debate, discussion, and even disagreement. At times this may challenge you and even cause discomfort,” the letter warned. In an earlier report on freedom of expression, University officials cited former Chicago President Hanna Holborn Gray, who observed that “education should not be intended to make people comfortable, it is meant to make them think.” “Universities should be expected to provide the conditions within which hard thought, and therefore strong disagreement, independent judgment, and the questioning of stubborn assumptions, can flourish in an environment of the greatest freedom,” the report stated. The University of Chicago’s decision garnered plaudits from First Amendment advocates. “Free speech is at risk at the very institution where it should be assured: the university,” University of Chicago president Robert Zimmer said. The university is preparing students for the real world and would not be serving them by shielding them from unpleasantness, said Geoffrey Stone, chair of the committee, law professor and past provost at the U. of C. “The right thing to do is empower the students, help them understand how to fight, combat and respond, not to insulate them from things they will have to face later,” Stone said. Last May, DePaul University cancelled a speech by Breitbart’s Milo Yiannopoulos after protests broke out on campus. When Yiannopoulos tried to reschedule, DePaul declared that he was banned from the University.

### Madden

#### Climate denial makes effective action against warming impossible and advances a Trumpian agenda.

**Madden:** Madden, Lauren R. [Contributor, Her Campus] “The Real Problem With Climate Change Denial: Science Aside.” *Her Campus.* February 2017. RP

**The scientific community has felt some unrest within the past few weeks due to some decisions made the White House**. Don’t get me wrong, as a student studying science, I feel the need to appreciate climate change denial in a sense that it serves as motivation for us to gather more information and learn more about the planet we live on. **However, there are downfalls beyond the fact that deniers present arguments that aren’t grounded in reliable, heavily researched data. One of President Donald Trump’s appeals as a candidate in the past election was his reputation as a business man. America is still recovering from The Great Recession, and many citizens are relying on his skill to put our country back on track.** I might have a relatively limited knowledge of the business world compared to a college student earning their degree in something that teaches them about economics and company growth. **Regardless, I think it’s universally agreed that progress comes from change with the future in mind. You don’t have to be a geologist to know that Planet Earth doesn’t have an unlimited supply of oil and coal. It’s no mystery why these resources are eventually going to become more and more expensive, not just economically, but also expensive in terms of our carbon budget. (If you don’t know much about atmospheric chemistry, you can read about what a carbon budget is here.) But again, science aside – even if every ounce of research about global warming is unreliable – depending on non-renewable resources is simply not sustainable. I’m sure it will boost economic activity in the short run, but that’s not the debate. There is, for all we know, an exponential number of people that are going to live on this planet after us, and it’s lazy and foolish to think that we’ll never need to change our ways. Between all the waste we produce and all the resources we use and don’t replace, it’s pretty well understood that there’s going to be a lot of cleaning up done by the generations after us, and not enough people are conscious of that. It’s easy to make a mess if you’re not the one who has to clean it up**. My mother taught me to leave a place cleaner than I found it, and my dad taught me that a successful career should be focused on “moving it down the line,” meaning I need to be productive for those who will live after me. Success relies on progress. If you don’t keep moving forward, you’re going to fall behind. It’s a heavy but fallacious appeal to tradition when your campaign slogan is “Make America Great Again.” Why not make America greater than it was before?

### Williamson

#### There are growing trends in academia to restrict the ability to deny climate change

**Williamson:** Williamson, Kevin D. [Contributor, National Review] “Free Speech & Climate Science – Campus Censorship is Only the Beginning.” *National Review.* April 2016. RP

**I spent part of the week speaking on several college campuses in Texas, and my subject was free speech and the threats against it on campus and beyond. The students were in the main shocked and dismayed at the revitalization of censorship as a political ideal and by the widespread support for censorship among so-called liberals**. Most of them were genuinely unaware of just how far and wide the war against free expression currently ranges. This is strange, because the war on free speech starts on campus. **In March of 2014, Professor Lawrence Torcello of the Rochester Institute of Technology, the seal of which appears alongside the definition of “second- rate” in many dictionaries, published a short article online calling for the criminalization of what he calls “climate denial,” meaning the holding, perpetuating, and, especially, the financial support of heretical ideas about global warming**. A few articles were written criticizing the article, and the response was the expected one: “It’s just one crank nobody professor from some second-rate philosophy department publishing a blog post, don’t make such a big deal about it!” Professor Torcello subsequently denied that he had argued what he plainly does argue, namely that legal protections for free speech should not encircle those who dissent from the received dogma of global warming. “Misguided concern regarding free speech,” he wrote, should be no impediment to imposing criminal sanctions on those whose activism “remains a serious deterrent against meaningful political action” on the issue. We’ve taken this ride before: An obscure academic writes something loony. We withstood “feminist physics” and “queer algebra,” and we’ll get through this, too. **Shortly after Professor Torcello’s tentative exploration of criminalizing political disagreement, Gawker published an article by Adam Weinstein bearing the straightforward headline: “Arrest climate-change deniers.” Building on Professor Torcello’s argument, Weinstein called explicitly for the imprisonment (“denialists should face jail”) of those working to further particular political goals (“quietist agenda posturing as skepticism”) on climate change.** Never mind that protecting people and institutions attempting to further a political agenda is precisely the reason we have a First Amendment. Weinstein dismisses the First Amendment out of hand, with the expected dread cliché: “First Amendment rights have never been absolute. You still can’t yell ‘fire’ in a crowded theater. You shouldn’t be able to yell ‘balderdash’ at 10,883 scientific journal articles a year, all saying the same thing.” “balderdash” at the conventional wisdom has a very long and proud tradition. (Not that it should matter to this debate, but I suppose I should here note for the record that I hold more or less conventional views on climate change as a phenomenon but prefer mitigatory policies to preventative ones.) The name “Elsevier” is not beloved on college campuses (the modern company is a publisher of academic journals and sometimes is criticized for its pricing), but it is to that company’s spiritual ancestor, the Dutch printing house of Lodewijk Elzevir and his descendants, that we owe the publication of, among other articles of samizdat, the works of Galileo, at that time under Inquisitorial interdict. (The story of Elzevir’s 1636 covert mission to Arcetri to meet with Galileo and smuggle his manuscripts to Amsterdam, a city that was then as now a byword for liberality, would make a pretty good movie.) It isn’t that it’s likely that our contemporary global- warming critics are doing work as important as Galileo’s: It’s that no one knows or can predict, which is the practical case for free expression, which should be of some concern even to our modern progressives, self-styled empiricists and pragmatists who reject the moral case for free expression. I raised some alarm about the Gawker article at NATIONAL REVIEW, and once again the response was the predictable one: “It’s just Gawker, and it influences no one possessing any intelligence. No sensible person takes Adam Weinstein seriously.” That is all true enough, but it is not only or mainly the intelligent and the sensible who move the world of public policy. We have Kennedys to consider. The subsequent developments are relatively well known: **Robert F. Kennedy Jr., speaking at a large climate-change march in New York, called for the imprisonment of those holding impermissible views on global warming and those who with their financial resources support and spread such views. New York attorney general Eric T. Schneiderman opened a case against Exxon, and the attorneys general of Massachusetts and the U.S. Virgin Islands announced their intended participation in this inquisition**. (Al Gore was present at the announcement.) Schneiderman’s prosecution, in the words of the New York Times, would focus on “the company’s funding, for at least a decade, of outside groups that worked to dispute climate science.” **This is straight from Professor Torcello. The goal of course is to bully institutions, corporations, and particularly donors and the nonprofits sustained by them. Torcello: “The charge of criminal and moral negligence ought to extend to all activities of the climate deniers who receive funding as part of a sustained campaign to undermine the public’s understanding of scientific consensus**.” Kamala Harris, the California attorney general who is seeking a Senate seat, announced an identical investigation of her own. The Obama administration has referred the federal question to the FBI for possible prosecution; currently, progressive strategists are pushing for prosecution under the RICO law, a racketeering statute used to prosecute sprawling organized-crime syndicates.

|  |  |
| --- | --- |
|  |  |

### Wong and Green

#### Protests on campus don’t work – administrators can just ignore them – Princeton proves.

**Wong and Green:** Alia Wong and Adrienne Green [ALIA WONG is an associate editor at The Atlantic, where she oversees the education section. She previously wrote for Honolulu Civil Beat. ADRIENNE GREEN is an assistant editor at The Atlantic. ] “Campus Politics: A Cheat Sheet.” The Atlantic. April 2016. RP

**Princeton University announced on Monday that its board of trustees has voted to retain Woodrow Wilson’s name on its public-policy school and a residential college, despite high-profile efforts to scrap it. Last November, student activists led by the Black Justice League staged a 32-hour protest and sit-in at Princeton President Christopher Eisgruber’s office urging him to do away with Wilson’s name because of his racist legacy; the former U.S. president, who also served as a Princeton faculty member and then president in 1902, was a segregationist who opposed the idea of admitting black students and glorified the Ku Klux Klan.** In a report, the 10-member special committee appointed to consider Wilson’s legacy on campus concludes that while the Woodrow Wilson School of Public and International Affairs and Woodrow Wilson College—one of the university’s six dorm clusters—should retain their current names, “the University needs to be honest and forthcoming about its history.” “This requires transparency in recognizing Wilson’s failings and shortcomings as well as his visions and achievements that led to the naming of the school and the college in the first place,” the report continues. (Half of the members on the special committee are people of color.)

### Maxwell

#### Black safe spaces are increasing in the status quo – Northwestern proves

**Maxwell:** Maxwell, Peter [Peter Maxwell, Master’s Degree in Communication and Media Studies, Lynn University. BA, Curry College, broadcast journalism.] “Northwestern plans to quadruple safe spaces for black students, conduct ‘cultural audit’.” The College Fix. October 2016. RP

**Northwestern University is planning to quadruple the number of safe spaces on campus for black students, according to a task force report released last month on the “Black Student Experience.” The 149-page report says the black student community at NU feels “dissatisfied, exhausted and alienated on campus.**” It lists more than 40 “campus bias incidents” dating to 2006 in one of its eight appendices, which total 90 pages. Basic math is the biggest problem at Northwestern, according to the report: Fewer than one in 10 students is black. The task force recommends increasing the number of black students – by giving them more attractive financial-aid packages – and “relentless[ly]” recruiting black faculty and giving them “research opportunities.” The report also recommends that Northwestern “[e]mbed opportunities into the fabric of Northwestern where students learn about and are challenged to wrestle with issues of diversity, social inequalities, social justice, and inclusion.” It tells undergraduate schools that have not approved a United States-focused “social inequalities and diversity course” to hurry up their review of the proposed course requirement. The university should conduct a “cultural audit” of all Northwestern buildings and spaces to ensure that they are “representative of the diversity that exists within the University.” **Perhaps most important for black social life, the report recommends the designation of three more black-focused spaces on campus for both “large social events” and “more intimate gatherings,” because not everyone feels welcome at the Black House.**

### Jones

#### Whites are allowed to have safe spaces, and Blacks should too

**Jones:** Jones, MJ Michal [Contributor, Everyday Feminism] “5 Reasons We Need Black-Only Spaces (And No, Reverse Racism Isn’t One of Them).” *Everyday Feminism.* September 2015. RP

It was mid-summer and I was on my way to a social justice and anti-oppression conference when I first learned of the Charleston church shooting. Relatively new to community organizing, I’d been looking forward to networking with radical activists of color for many months. I couldn’t wait to bring new skills, connections, and ideas back to the Black liberation groups of which I was a part. **But as I sat in the airport watching images of slain Black faces blast over the TV monitors, I broke down. I covered my face with a blanket, and I wept. When I was finally settled in my hotel room, I slept for many hours.** As I moved through the conference space, I could feel the shattering hearts of other Black attendees, but I saw no official response to Charleston from the organizers. Instead, instances of anti-Black violence permeated the conference experience: Black femme and trans attendees had racist and oppressive encounters at conference-sponsored venues and non-Black folks entered spaces that were designated for us and us only. **This conference, which was powerful in other ways, still showed me that the erasure of Black experience knows no bounds – it even happens within radical spaces and around folks with positive intentions. And the most powerful, healing, and transformative spaces were those that Black presenters and organizers created, for ourselves, in the midst of ongoing tragedy. As a result, the conference, more than anything else, reminded me of how vital all-Black radical spaces are. And in that way, it was beautiful and liberating. The fact remains, however, that all-Black spaces are still constantly questioned, attacked, and made invisible within mainstream society and in “anti-oppressive” spaces. While white privilege allows large groups of white folks to gather together without question, Black folks can’t even hold public space without being views as suspicious or troublesome. We continue to be perceived as “violent” (even when no harm or destruction is present). These conditions show how, more than ever, all Black spaces continue to be vital for Black survival, resistance, and healing. Here are some reasons why we need them.**

#### The neg represents a middle finger to white supremacy – whites hate this idea

**Jones:** Jones, MJ Michal [Contributor, Everyday Feminism] “5 Reasons We Need Black-Only Spaces (And No, Reverse Racism Isn’t One of Them).” *Everyday Feminism.* September 2015. RP

**The very need to defend all-Black solidarity spaces shows us the extent and hypocrisy of anti- Black racism in the US and abroad. When Black people create our own spaces, businesses, and gatherings, our behavior is often perceived as “reverse racism. “ We encounter frustrated exclamations of “If white people created a white-only group, we would be called racist!” or “Why isn’t there a white student union? But it is vital to understand that these spaces are often in response to oppression – we need to be with each other and away from the abuse of racism and white supremacy. And in reality, Black folks actually aren’t safe gathering and organizing – the Charleston massacre and the series of arsons against Black churches this past summer demonstrate that even our prayer and healing spaces remain targeted. The reason Black communities and spaces are often attacked usually isn’t because white and non-Black folks “cant” join in. The unspoken truth behind the backlash is that Black folks are directly challenging white supremacy, which seeks to divide and destroy us, not see us unified.**

### Lloyd

#### Ahmed uses a false metaphor of happiness and misrepresents the causes of suffering – dooms productive strategies.

**Lloyd:** Lloyd, Moya “Book Review of Sara Ahmed, The promise of happiness.” 2013. RP

**Nevertheless, there are aspects of Ahmed’s argument that trouble me. First, it is not clear if she is opposed to happiness per se or only to normative happiness. Her argument often appears to incline to the former because of the constant stress that she places on the immanent coerciveness of happiness. If this is her contention, and it is not entirely clear that it is, then it would seem to indicate that any experience of happiness will necessarily be oppressive. By implication, this further suggests that ‘happiness’ as such cannot be transformed in more productive directions and that affect aliens cannot pursue or develop alternative forms of happiness – because happiness itself is the problem. Although Ahmed demonstrates very effectively the deficiencies of ‘normative’ happiness, I am unconvinced it follows that happiness itself as an emotional state has to be construed as inherently inappropriate or in need of renunciation.**

### Hudson

#### Tobacco ads on campus are constitutionally protected

**Hudson:** Hudson, David L., Jr. [First Amendment Scholar] “Tobacco ads.” *First Amendment Center.* September 2002. RP

**Government officials continue to wage war on tobacco advertising**. The Federal Trade Commission, the Food and Drug Administration and other federal and state regulators have targeted tobacco manufacturers, accusing them of marketing to minors and restricting what the companies can say in their advertising. The regulators cite scientific studies showing that tobacco is a harmful product. **On the other hand, the First Amendment presupposes that people, not the government, should decide what is best for themselves**. Restrictions on tobacco ads come at a time when juries have awarded astronomical amounts to plaintiffs suing tobacco companies. Many states have attacked big tobacco companies, contending that they have caused serious health problems and related expenses. The culmination of the states’ efforts resulted in a 1998 settlement agreement involving more than 46 states and the six largest tobacco companies — Brown & Williamson Tobacco Corp., Lorillard Tobacco, Philip Morris Companies Inc., R.J. Reynolds Tobacco Co., Commonwealth Tobacco and Liggett & Myers Tobacco Co. Under this settlement, called the Master Settlement Agreement, the parties agreed to settle nearly all litigation between the parties. In agreeing to the settlement, the tobacco companies placed many restrictions on the marketing and advertising of tobacco products. Some of these self-imposed advertising restrictions include: Tobacco companies cannot use cartoon characters, such as “Joe Camel,” to advertise their products. Tobacco companies cannot target youth in the advertising, promotion or marketing of tobacco products. Tobacco companies cannot sponsor concerts or other events with significant youth audiences, including team sporting events, such as football games. Tobacco brand names cannot be advertised at stadiums and arenas. Those who wish to curtail tobacco advertising to children lauded the Master Settlement Agreement. Robert Kline, a staff attorney with the Boston-based Tobacco Control Resource Center at Northeastern University, says that “the tobacco industry’s voluntary giving up of advertising rights is a benefit to society” because fewer children will see tobacco ads. But some believe that the restrictions, if they came in the form of legislation as opposed to a voluntary settlement, would be unconstitutional. “**Many of the restrictions on advertising included in the settlement agreement could not be imposed legislatively because they would violate the First Amendment,**” says Richard Samp, chief counsel of the Washington Legal Foundation. The trend in law since the 1998 agreement has been “litigating over the meaning of the Master Settlement Agreement,” Samp said. In 2001, the California attorney general’s office filed suit against R.J. Reynolds for violating the Master Settlement Agreement by targeting children by advertising in magazines such as Sports Illustrated and Spin. The state said many teenagers read these magazines. The case ended in a settlement agreement in December 2004, under which R.J. Reynolds cannot advertise in publications that have teen audiences comprising 15% or more of their readership and must keep the total number of teenagers exposed to advertising at 30% below the number of adults exposed. R.J. Reynolds is also prohibited from tailoring advertising to teenagers. The company paid nearly $17 million in civil penalties and court costs. Kline said various other state attorneys general have threatened to force tobacco companies to comply with various restrictions contained in the Master Settlement Agreement. Usually tobacco companies will back down once an attorney general threatens suit, he said. In spite of the Master Settlement Agreement, some states chose to expand the regulation of tobacco advertising. In 1999, then-Attorney General of Massachusetts Scott Harshbarger announced new regulations on tobacco products. These included advertising restrictions designed to “close holes” in the settlement agreement and “to stop Big Tobacco from recruiting new customers among the children of Massachusetts.” The Massachusetts regulations were even broader than those contained in the Master Settlement Agreement. For example, the Massachusetts regulations covered far more people and businesses than the settlement, which affected six major tobacco companies. One regulation targeted “outdoor advertising” of tobacco products. It provided: Outdoor advertising, including advertising in enclosed stadiums and advertising from within a retail establishment that is directed toward or visible from the outside of the establishment, in any location that is within 1,000 foot radius of any public playground, playground area in a public park, elementary school or secondary school. Another provision prohibited certain advertising in retail stores visible from the outside. The provision defined “point of sale” advertising defined as any ads placed lower than 5 feet from the floor of any retail establishment**. A group of makers and sellers of tobacco products filed three separate suits in federal court in May 1999, challenging the constitutionality of the Massachusetts regulations. The plaintiffs consisted of cigarette, smokeless tobacco and cigar firms. They made two principal arguments. The cigarette and smokeless tobacco companies argued that the advertising restrictions were preempted by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Section 1334(b). The law prohibits a state from imposing any “requirement or prohibition based on smoking and health … with respect to the advertising or promotion of … cigarettes.” The smokeless tobacco and cigar plaintiffs also argued that the restrictions violated their First Amendment free-speech rights**. A U.S. district court called tobacco advertising “functional pornography” and upheld the majority of the advertising restrictions. The court did strike down the “point of sale” provision. The 1st U.S. Circuit Court of Appeals affirmed the lower court and also upheld the point-of-sale restriction. Both courts rejected the preemption claim. The 1st Circuit reasoned that the federal law only preempts the content of cigarette labels and does not affect state laws relating to the location of cigarette ads. **In its 2001 decision in** [**Lorillard Tobacco Co. v. Reilly,**](http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&navby=case&vol=000&invol=00-596) **the U.S. Supreme Court reversed the 1st Circuit on both the preemption and First Amendment issues. The Court determined that the federal cigarette-labeling law did preempt state restrictions on advertising and promotion of cigarettes**. Justice Sandra Day O’Connor reasoned that “a distinction between state regulation of the location as opposed to the content of cigarette advertising has no foundation in the text of the pre-emption provision.” Four justices dissented on the preemption issues. The majority then examined the advertising restrictions imposed on the smokeless tobacco and cigar petitioners. The Court determined that the state attorney general had a substantial, even compelling, interest in protecting minors from tobacco products. But it decided that the 1,000-foot restriction on outdoor advertising was simply too broad. “**In some geographical areas, these regulations would constitute nearly a complete ban on the communication of truthful information about smokeless tobacco and cigars to adult consumers,” the Court wrote. “The uniformly broad sweep of the geographical limitation demonstrates a lack of tailoring.” The Court emphasized that the 1,000-foot ban on outdoor advertising was particularly onerous because the law’s definition of outdoor advertising included advertising in a store if the ad was visible from outside the store. The justices also focused on the fact that the regulations would curtail the speech that adults could receive**. **Even though the state has a substantial interest in protecting minors from tobacco usage, tobacco manufacturers and adult consumers have a First Amendment right to provide and receive information about lawful products**. The Court also struck down the “point of sale” provision prohibiting advertising lower than 5 feet from the floor of retail advertisements. The majority determined that this restriction did not advance the state’s goals in protecting minors. “Not all children are less than 5 feet tall, and those who are certainly have the ability to look up and take in their surroundings.” **Justice Clarence Thomas wrote separately to emphasize his oft-stated view that commercial speech, including tobacco advertising, should not receive second class status in First Amendment jurisprudence**. Thomas stressed that “when the government seeks to restrict truthful speech in order to suppress the ideas it conveys, strict scrutiny is appropriate, whether or not the speech in question may be characterized as ‘commercial.’” Even the justices who dissented on the preemption issue were troubled by the outdoor advertising regulations. In his dissent, Justice John Paul Stevens said that he would favor sending the case down to the lower court for the development of further evidence on the breadth of the regulation. Many free-speech experts praised the Court’s decision. “**Under the First Amendment, you cannot restrict speech on the mere possibility that a small amount of children might see the speech**,” Samp said. “The gist of the Supreme Court’s First Amendment jurisprudence in this area is that the government cannot ban advertising directed to adults simply because a small part of advertising will reach children.” At least 20 similar laws in different cities and states have been repealed since the Lorillard decision, Samp said. **Most recently, in 2012 a federal district judge in Massachusetts struck down a Worcester ordinance that included broad restrictions on tobacco advertising**. The ordinance, passed by the Worcester City Council in 2010, read, “No person shall display any advertising that promotes or encourages the sale or use of cigarettes, blunt wrap (rolling papers) or other tobacco products in any location where any such advertising can be viewed from any street or park shown on the Official Map of the city or from any property containing a public or private school or property containing an educational institution … .” In National Association of Tobacco Outlets v. City of Worcester, U.S. District Judge Douglas P. Woodlock found that the ordinance failed to meet the U.S. Supreme Court’s tests for evaluating commercial speech from [Central Hudson Gas and Electric v. Public Service Commission of New York,](http://www.oyez.org/cases/1970-1979/1979/1979_79_565) writing that “the City of Worcester may not seek to remove a popular but disfavored type of products — those products that serve tobacco usage — from the marketplace by prohibiting truthful, nonmisleading advertisements directed to adults.”

### PHW

#### People don’t even want guns on campus

**PHW:** Public Health Watch [Organization that monitors public health problems across the country] “Point Blank: Guns Don’t Belong On College Campuses – Here’s Why.” *Public Health Watch.* March 2014. RP

**Most Americans don’t support the idea of allowing guns on college campuses. In a 2001 nationwide study, researchers interviewed thousands of people to examine public attitudes about gun carrying. An overwhelming 94% of respondents said they oppose laws that would let people carry guns on campuses, and over two-thirds of respondents felt less safe as more people in their community began to carry guns**. According to the authors of the study, “by margins of at least nine to one, Americans do not believe that “regular” citizens should be allowed to bring their guns into restaurants, college campuses, sports stadiums, bars, hospitals, or government buildings...**The public believes that increased gun carrying by others reduces rather than increases their safety. Overwhelmingly, the public believes that in many venues gun carrying should be prohibited.” That opposition reaches every part of the country, every demographic group and even every part of the Republican coalition. Men oppose it by a 7-to-1 ratio. Republican voters oppose it by 6 to 1.** Residents of the South oppose it by more than 5 to 1. College administrators, faculty members, students, and campus police officers across the country oppose legislation to allow guns on campuses. Colleges don’t want these laws either. In Idaho, lawmakers dismissed opposition from all eight public university presidents, the state Board of Education, faculty senates, and student associations. Beyond the safety concerns, school administrators also cite significant financial burdens. Last weekend, Idaho State University said it would cost $600,000 to beef up campus security in the first year alone if legislation that overrides no-carry gun policies at Idaho’s colleges and universities becomes law. And yet, many Republican lawmakers – fueled by the deep pockets of the gun lobby – continue to exploit an erroneous interpretation of the Second Amendment to push for the “right” to carry guns on college campuses. On April 16, 2007, the day of the “Massacre at Virginia Tech,” in which 32 innocent college students and faculty lost their lives to a crazed gunman armed with two semi- automatic pistols and a couple hundred rounds of ammunition, the first reaction of the gun lobby was that we need more guns on the college campuses of our nation. That’s correct. Before a single funeral was held for any of the victims of the Virginia Tech tragedy, and before anyone even knew who the victims were or the perpetrator was, the gun lobby called for college campuses to be turned into armed camps. The gun lobby also wants to repeal the Federal Gun-Free School Zones Act and arm public school teachers.

#### Empirics confirm that gun free campus settings solve

**PHW:** Public Health Watch [Organization that monitors public health problems across the country] “Point Blank: Guns Don’t Belong On College Campuses – Here’s Why.” *Public Health Watch.* March 2014. RP

**Frequently lost in the national debate is the fact that our nation’s colleges and universities are some of the safest places in our country in large part because their campuses, in almost all cases, have remained gun-free. The overwhelming majority of the 4,314 colleges and universities in the United States prohibit students and faculty from carrying concealed handguns on campus (the exceptions include public colleges and universities in Utah; Blue Ridge Community College in Weyers Cave, Virginia; and Colorado State University in Fort Collins, Colorado). Despite high-profile shootings like the ones mentioned above, homicides at American colleges and universities remain rare events. A 2001 study by the U.S. Department of Education found that the overall homicide rate at postsecondary education institutions was 0.07 per 100,000 of enrollment in 1999. By comparison, the criminal homicide rate in the United States was 5.7 per 100,000 persons overall in 1999, and 14.1 per 100,000 for persons ages 17 to 29**. Another study, conducted by the Department of Justice, found that 93% of violent crimes that victimize college students occur off campus. **This research demonstrates conclusively that students on the campuses of postsecondary institutions are significantly safer than both their off-campus counterparts and the nation as a whole.** The discrepancy in violent crime rates was largely attributed to the fact that nearly every academic institution has adopted strict policies to keep firearms away from the classroom and other campus environments. Our colleges and universities are safe sanctuaries for learning, and they would be endangered by the presence of concealed handguns for the following reasons: 1) **Concealed handguns would detract from a healthy learning environment; 2) More guns on campus would create additional risk for students; 3) Shooters would not be deterred by concealed carry permit holders**; 4) Concealed carry permit holders are not always “law-abiding” citizens; 5) Concealed carry permit holders are not required to have law enforcement training; and 6) **Firearms are immensely more likely to be used to intimidate, threaten, or harm another person than to be used in self-defense.**

#### Psychological evidence confirms that guns in public settings on campus chill debate

**PHW:** Public Health Watch [Organization that monitors public health problems across the country] “Point Blank: Guns Don’t Belong On College Campuses – Here’s Why.” *Public Health Watch.* March 2014. RP

**In order to foster a healthy learning environment at America’s colleges and universities, it is critical that students and faculty feel safe on campus. If concealed carry were allowed on America’s campuses, there is no doubt that many students would feel uncomfortable about not knowing whether their professors and/or fellow students were carrying handguns. There is even a name for the negative effects of increasing the number of guns in public places: the “weapons effect.”** The weapons effect is a phenomenon described and evidenced for in the scientific field of social psychology. **Originally described by Leonard Berkowitz and Anthony LePage in 1967, the weapons effect refers to the mere presence of a weapon or a picture of a weapon leading to more aggressive behavior in humans**. In other words, knowing that people around you are carrying guns makes you more likely to act aggressively and impulsively. Describing his findings, Dr. Berkowitz stated, “**Guns not only permit violence, they can stimulate it as well. The finger pulls the trigger, but the trigger may also be pulling the finger.” Since the first study by Drs. Berkowitz and LePage, other researchers have validated the findings by replicating the original experiment — and in a review of 56 published studies on the weapons effect, researchers confirmed that the mere sight of weapons increases aggression in both angry and non angry individuals. Students and teachers must be able to express themselves freely in classroom environments, where discussions frequently touch on controversial topics that arouse passion. The introduction of handguns on our campuses would inhibit this dialogue by creating fear of possible retaliation**. Whether it’s a classroom debate, a student-teacher conversation about a grade, or an informal interaction in a dormitory; the presence of hidden handguns would restrain the open exchange of ideas that is so critical to the college experience. Americans, in overwhelming numbers, believe that guns have no place at our colleges and universities. In one national survey, 94% of Americans answered “No” when asked, “Do you think regular citizens should be allowed to bring their guns [onto] college campuses?”

#### The harms to homicides on campus outweighs self defense

**PHW:** Public Health Watch [Organization that monitors public health problems across the country] “Point Blank: Guns Don’t Belong On College Campuses – Here’s Why.” *Public Health Watch.* March 2014. RP

In the gun lobby’s arsenal of propaganda, the claim that guns make people safer may be the most potent. **After all, while gun advocates make grandiose claims about the Second Amendment being designed to enable armed citizens to resist government tyranny, no sane person believes individuals armed with handguns and rifles would stand a chance against a trillion-dollar 21st century military backed by vast surveillance systems.** But protecting one’s family, home or person? That seems sensible enough. If guns make us safer, as they say, then having a gun for self-defense isn’t an irrational choice... until you look at the evidence. Despite the fact that there are more than 200 million firearms in private hands in the United States and 48 states now allow some form of concealed carry, instances in which law-abiding citizens successfully shoot and kill criminals are exceedingly rare. **In 2005, there were a total of 12,352 gun- related homicides and an overall total of over 30,000 gun deaths in the United States. Yet, during the same year, the FBI reported only 143 justifiable homicides involving a firearm.** A 2000 study by David Hemenway of the Harvard School of Public Health concluded that, “**Guns are used to threaten and intimidate far more often than they are used in self defense**. Most self reported self defense gun uses may well be illegal and against the interests of society.” In fact, guns are used 5-6 times more often to intimidate and threaten than they are used to thwart crime, and victims of crime who are in possession of a gun are 4.5 – 5.5 times more likely to be shot during the crime than unarmed people. **According to the FBI’s Crime in the United States report for 1998, for every instance that a civilian used a gun to kill in self-defense, 50 people were murdered with firearms – and another 75 were killed in firearm accidents and suicides**. We live in a country where people are shot – and often killed – during arguments over the most trivial things — like barking dogs, loud music, Xbox’s, and allowing a puppy to urinate on the wrong lawn. With a gun murder rate about 20 times the average of other industrialized countries, it’s hard to argue with Dr. Hemenway’s conclusion: “Where there are more guns, there is more homicide.” The laws set to pass in states like Idaho and Georgia would require public universities to allow guns on campus. This legislation would prevent colleges from setting their own gun policies—and will make students, staff and faculty less safe. When the gun lobby uses the Second Amendment to justify their militant pro-gun ideology, they are displaying one of two things: a fundamentally flawed interpretation of the Constitution, or a blatant misrepresentation of the truth. Either way, the Second Amendment does not guarantee the right to carry a gun on college campuses. The fallacious proposition that the Second Amendment prohibits any and all restrictions on gun ownership and carrying is manifested in the legality of semi-automatic assault weapons in the United States and the ability of people like Jared Loughner to legally purchase guns from a store. **Soon that list will include the legality of concealed weapons on some states’ college campuses, to the detriment of the students, universities and ultimately, the nation.**

### Uelmen

#### Speech codes are a pragmatic strategy – universities need to have the option to restrict speech when it conflicts with the purpose of a classroom discussion.

**Uelmen:** Uelmen, Gerard [Contributor, Character Education] “Campus Hate Speech Codes: A pro-con discussion of speech codes and free speech.” *Character Education.* November 1990. RP

Those who advocate hate speech codes believe that the harm codes prevent is more important than the freedom they restrict. **When hate speech is directed at a student from a protected group, like those listed in Emory University's code, the effect is much more than hurt feelings.** The verbal attack is a symptom of an oppressive history of discrimination and subjugation that plagues the harmed student and hinders his or her ability to compete fairly in the academic arena. The resulting harm is clearly significant and, therefore, justifies limiting speech rights. In addition to minimizing harm, hate speech codes result in other benefits. **The university is ideally a forum where views are debated using rational argumentation; part of a student's education is learning how to derive and rationally defend an opinion. The hate speech that codes target, in contrast, is not presented rationally or used to provoke debate. In fact, hate speech often intends to provoke violence. Hate speech codes emphasize the need to support convictions with facts and reasoning while protecting the rights of potential victims. As a society we reason that it is in the best interest of the greatest number of citizens to sometimes restrict speech when it conflicts with the primary purpose of an event. A theater owner, for example, has a right to remove a heckler when the heckler's behavior conflicts with the primary purpose of staging a play - to entertain an audience. Therefore, if the primary purpose of an academic institution is to educate students, and hate speech obstructs the educational process by reducing students' abilities to learn, then it is permissible to extend protection from hate speech to students on college or university campuses.**

### Mulhere

#### The Confederate flag is a symbol to black students that they don’t belong and should be excluded from the campus – administrative action is key.

**Mulhere:** Mulhere, Kaitlin [Contributor, Inside Higher Ed] “A Flag and Race at Bryn Mawr.” October 2014. RP

-Answers counterspeech – students won’t take down flag unless administration makes them

**A debate about a Confederate flag two students put up in their dorm room at Bryn Mawr College has escalated to a demonstration involving hundreds and a broader debate about diversity and inclusiveness at the institution**. Those students who donned black and held homemade signs in the protest after the flag incident want it known that they’re not finished yet. **Many minority students feel that their voices aren’t valued or highlighted on campus, and they want the college to acknowledge their concerns**, said Allegra Massaro, a senior and president of the Tri-College Chapter of the NAACP. “These issues are not limited to Bryn Mawr’s campus,” Massaro said. “They exist for students of color at a lot of elite universities.” In response, the administration has written a series of community [letters](http://inside.blogs.brynmawr.edu/2014/09/18/letter-to-the-bryn-mawr-community-from-dean-balthazar/), and last week, President Kimberly Cassidy [pledged](http://inside.blogs.brynmawr.edu/2014/10/02/sept-30-letter-to-the-community/) that change would come, starting with re-creating a diversity council to focus on handling issues of bias and re-examining how college's honor code can better address them. Cassidy told Inside Higher Ed that it was frustrating to watch Bryn Mawr's minority students go through such a painful experience, and that college leaders shared their goals. “I don’t see what the students are asking about as demands,” she said. “In terms of what they’re looking to do, those are the very same things that we’re looking to do.” **In September, two Bryn Mawr students hung up a Confederate flag in a public area of the Radnor Hall dormitory and used neon duct tape to symbolize the Mason-Dixon line on the carpet. Others in the dorm asked the students to take the flag down, but they refused, saying it was a representation of their Southern pride. After more requests from students and dorm leaders, the flag was moved inside their room, but it was still visible through a window**. The administration had to balance the calls for action from some students and the rights of the students who hung the flag, Cassidy said. Bryn Mawr also has a strong tradition of self-governance among students, and that process can take time. Eventually, the students, who haven't been publicly identified, took down the flag. It is unclear to what extent the students felt pressured to do so, and they have made no public statement. "I think some people felt like that took too long,” Cassidy said. In the days that followed, campus was chaotic, Massaro said. **Some students went home for a few days**. Other upset students were searching for a way to show their anger, many suggesting that Cassidy’s inauguration on Sept. 20 would present an ideal opportunity. By mid-week, Interim Provost Mary Osirim sent an email asking faculty members to be patient with students who might be missing class or turning in assignments late due to the “great deal of stress” caused by the flag and related issues of race on campus. “**So now you have this incident and these people’s freedom of speech disrupting the whole purpose of the college,”** Massaro said. By the end of the week, student leaders organized a [demonstration](https://www.facebook.com/events/1486196191654686/), in which more than 500 students, administrators, faculty members, alumnae and trustees participated and made a human chain around one of the main buildings on campus. "It was a terrific way that the students organized it to be a demonstration of larger systemic issues, not only on Bryn Mawr’s campus in but in society as a whole, to give voice to marginalized groups,” Cassidy said. The campus NAACP chapter, which organized the event, provided a list of changes it wants to see on campus, based on student input. Some were specific and immediate: that the Confederate flag be banned from campus, that the college’s Honor Code be updated to have a section dedicated to “Race Respect,” and that the students who hung the flag offer a public apology to the campus and face consequences from the athletic department (both are members of multiple sports teams). Several people who've commented on the issues online have defended the two students, saying displaying the flag is their right. Cassidy said she could not comment on any disciplinary actions the two students may face but said the college is still in the process of handling the situation. Other changes the student demonstrators are pressing for are more long-term, such as mandatory diversity training for all students and faculty, increasing the number of faculty of color and offering more education about race symbols. Cassidy also mentioned diversity training and increasing the number of faculty of color as steps the administration is already working on. Like a recent protest over [race at Colgate University](https://www.insidehighered.com/news/2014/09/24/anonymous-racist-posts-social-media-network-prompt-colgate-students-stage-sit-now), this movement spread on social media, where students and alumnae shared their personal stories with hashtags such as #ifiwere, #becauseiam and #raceatBMC. (Students at the two colleges also supported each other’s movements via social media.) Debates over displaying Confederate flags on campus aren’t uncommon. But they’re more often seen at Southern colleges in states where Confederate culture was historically associated with the institution -- as opposed to a women’s liberal arts college outside Philadelphia that prides itself on being progressive. **Regardless, while the flag controversy may be the topic of the moment, students who are upset maintain that the action -- and more importantly, the administration’s reaction -- is representative of an ingrained culture of marginalization and racism**. Bryn Mawr has roughly 1,300 undergraduate students. About 37 percent of those students are white. African-American and mixed race students each represent about 5 percent, and Asian-American and Latina make up roughly 10 percent each. Another 23 percent are listed as non-resident aliens and 10 percent as unknown. The college prides itself on being a majority minority campus. But when those groups don’t feel comfortable or valued on campus, statistics don’t mean anything beyond an admissions selling point, an ability to market a diverse climate, Massaro said. “Colleges work really hard to get their numbers up there,” she said. “But then when those students are here, what are you doing to make them feel comfortable? And Bryn Mawr’s not doing much.” Some participants at the demonstration referenced a variety of incidents over the last several years. One was the closing of the Perry House, a black cultural center that also housed other students of color. It closed a few years ago due to lack of maintenance, upsetting residents, who thought the college had let the building fall into disrepair. A new section of the renovated [Haffner Hall](http://news.brynmawr.edu/2013/07/22/haffner-hall-renovations-will-add-rooms-and-incorporate-perry-house-program/) will house Perry House when it opens next year. Another incident that upset students and faculty occurred last year, when a student made a flier of an African man running through the plains and being chased by an ostrich. Copies of the flier were taped to the door of a professor from the Congo. The incident led to the town hall meeting, where students voiced similar concerns to those expressed in the past few weeks. There were no immediate changes, and it was unclear what sort of punishment, if any, the student faced, Massaro said. That was a common thread among the online discussion of the flag incident and demonstration -- exasperation that changes haven't been made even though problems have been raised before.  “**Time after time the administration hasn’t taken a firm stance on it,” Massaro said. “They’ve been rather passive or neutral**.” Students are hopeful that having a new president will help in effecting change, Massaro said. Part of the issue is that there seems to be confusion about who’s responsible for overseeing issues of diversity and inclusion. One option could be to hire a social responsibility or diversity officer to oversee that, she said. Creating a more inclusive environment takes time, though, and it requires broad participation across the campus, Cassidy said. That’s difficult new groups of students are brought in each year, and so there has to be ongoing education about how to support a diversity of thoughts and experiences without offending others. “We have all the action ahead of us,” Cassidy said. “But [the demonstration] felt like a concrete step forward. I don’t want to suggest that everything’s fine now. It’s a process, and we’re working on it.”

### Rigotti

#### The tobacco industry uses social events on campus to spread tobacco usage

**Rigotti et al:** Nancy A. Rigotti and Susan E. Moran [Nancy A. Rigotti and Susan E. Moran are with the Tobacco Research and Treatment Center, Division of General Medicine, Massachusetts General Hospital and Harvard Medical School, Boston, Mass. Henry Wechsler and Nancy A. Rigotti are with the Harvard School of Public Health, Boston. ] *“*US College Students’ Exposure to Tobacco Promotions: Prevalence and Association With Tobacco Use.” *American Journal of Public Health.* January 2005. RP

Tobacco use among young adults in the United States is a growing public health con- cern. Cigarette smoking rates declined between 1993 and 2000 among all US adults except those aged 18 to 24 years. Among US college students, the prevalence of smoking rose dramatically during the 1990s be- fore it declined slightly between 1999 and 2001.2–4 Smoking rates among young adults who do not attend college are higher than smoking rates among college students.4 Several factors account for young adults’ in- creased tobacco use. One factor is the aging of the cohort of adolescents whose smoking rates increased after 1991, but it does not explain all of the change.2–5 Another factor may be that young adults are initiating regu- lar tobacco use in larger numbers.5 Young adults (aged 18–24 years) are the youngest legal targets of tobacco industry marketing. Internal tobacco industry documents show that tobacco marketing targets young adults.6–9 The industry envisions the uptake of smoking as a process that extends into young adulthood, during which time adolescents’ experimental or occasional smoking becomes solidified into a regular smoking habit. The tobacco industry has de- veloped novel marketing strategies to pro- mote this transition. A well-documented strat- egy is to sponsor social events at bars and nightclubs where free cigarettes and promo- tional items are distributed. Similar pro- motions take place at college social events sponsored by organizations such as fraternities and sororities. Bars and nightclubs have assumed greater importance for tobacco marketing since the 1998 Master Settlement Agreement between the tobacco industry and 46 states’ attorneys general, because the agreement limits the distribution of free ciga- rette samples to facilities that do not admit minors.6,9,11 Bars and nightclubs also are smoker-friendly environments for the to- bacco industry, because they are among the few places where smoking is not generally re- stricted by clean-air laws.7 Promotional events at bars, nightclubs, and college social events aim to link alcohol with tobacco use and to make tobacco products a visible part of young adults’ social lives.6,7 The events reinforce brand visibility, allow the industry to reach specific target groups, and generate names for future marketing ef- forts.6,7,9 Promotions at social events have the potential to increase tobacco use by encouraging nonsmokers to try cigarettes, by en- couraging experimental smokers to develop regular use, and by discouraging current smokers from quitting. There is no information about the extent of young adults’ exposure to these new tobacco promotions or about the impact of these pro- motions on young adults’ tobacco use. The potential impact could be substantial, because young adults are more susceptible to tobacco marketing than adults in older age groups.12 Colleges and universities provide a key channel for reaching young adults, because ap- proximately one third of young adults attend college.13 Our study used data from a large na- tionally representative random sample of US college and university students to assess the prevalence of students’ exposure to tobacco promotions at bars, nightclubs, and campus social events and to explore the association between that exposure and smoking behavior. We hypothesized that students’ tobacco use before entering college might modify this association, because students who did not smoke regularly before college would be more susceptible to bar/nightclub promotions than students who entered college as regular smokers.

#### Emprics confirm that access to social events sponsored by the tobacco industry makes students smoke

**Rigotti et al:** Nancy A. Rigotti and Susan E. Moran [Nancy A. Rigotti and Susan E. Moran are with the Tobacco Research and Treatment Center, Division of General Medicine, Massachusetts General Hospital and Harvard Medical School, Boston, Mass. Henry Wechsler and Nancy A. Rigotti are with the Harvard School of Public Health, Boston. ] *“*US College Students’ Exposure to Tobacco Promotions: Prevalence and Association With Tobacco Use.” *American Journal of Public Health.* January 2005. RP

**Between the start of the 2000–2001 school year and the survey approximately 6 months later, 8.5% of respondents reported having attended a social event at a bar, nightclub, or on campus where free ciga- rettes were distributed: 6.8% attended an event at a bar or nightclub, and 3.2% at- tended a campus social event. Students at all but 1 school (N = 118, 99.2%) reported exposure to a tobacco promotion at a bar, nightclub, or campus social event. Exposure to a bar or nightclub promotion was re- ported by students at 115 colleges (96.6%), and exposure to an on-campus tobacco pro- motion was reported by students at 109 colleges (91.6%). The proportion of students at individual schools who reported exposure to bar or nightclub tobacco promotions ranged from 0.9% to 27.3%; the proportion of stu- dents who reported exposure to on-campus promotions ranged from 0.8% to 12%.** Simi- lar results were found when the analysis was repeated only with the subset of stu- dents from schools with high response rates. Among this subgroup, 8% (±0.6%, 1 SE) of students reported exposure to any tobacco promotion, 6.3% (±0.5%) reported exposure to a bar/nightclub promotion, and 2.9% (±0.3%) reported exposure to an on-campus tobacco promotion. Table 1 shows student-level and college- level characteristics independently associated with exposure to tobacco promotions at bars/ nightclubs, campus social events, or either venue. Exposure to tobacco promotions in- creased with grade in school. Asian Ameri- can students reported more exposure and Black students reported less exposure than non-Hispanic Whites. Exposure was greater at colleges in urban areas, in the South, and in major tobacco-producing states. Binge drinkers, current tobacco and marijuana smokers, and students who rated parties and fraternity or sorority life as very important had more exposure to tobacco promotions. When the analysis was limited to tobacco promotions in bars and nightclubs, the pat- tern of exposure changed little. In contrast, exposure to tobacco promotions at campus social events was unrelated to grade in school or student tobacco use, but exposure was higher among Asian American students (Table 1). Relationship Between Exposure to Tobacco Promotions and Tobacco Use. **Students who reported exposure to tobacco industry promotions at a bar, night- club, or campus social event were more likely than unexposed students to be current cigarette smokers** (42.6% vs 23.8%, respec- tively; P < 0.001) or current users of any to- bacco product (48.3% vs 28.3%, respec- tively; P < 0.001). Exposed students also were more likely than unexposed students to have smoked cigarettes (54.1% vs 32.8%, respec- tively; P < 0.001) or to have used a tobacco product in the past year (62.3% vs 40.7%, respectively; P < 0.001). The association between exposure to to- bacco promotions and higher rates of current cigarette smoking was consistent and re- mained statistically significant across sub- groups of students defined by gender, age (< 21 or ≥ 21 years), race (non-Hispanic White, Black, Hispanic, or Asian/Pacific Is- lander), year in school, geographic region (West, South, Northeast, North Central), urban location (large city or not), binge drinking during the past 2 weeks, and recent (past 30 days) attendance at a bar, nightclub, or cam- pus social event (data not shown). After we controlled for these factors in a multivariate analysis, exposure to tobacco promotions remained strongly associated with current smoking (adjusted OR=1.75; 95% CI=1.47, 2.08; P<.001). Exposure to tobacco promo- tions also was independently associated with past-year cigarette smoking (adjusted OR= 1.82; 95% CI=1.54, 2.17; P<.001) in a multivariate model that controlled for the same factors. The effect of exposure to tobacco promo- tions differed by age at onset of regular smoking. Of the 8482 students (78%) who did not smoke regularly before 19 years of age, the current smoking prevalence rate was 23.7% among those who had attended a promotional event compared with 11.8% among those who had not (P < .001). How- ever, of the 2334 students (22%) students who smoked regularly before 19 years of age, there was no significant difference in current smoking prevalence between those who had and had not attended a tobacco promotional event (77.5% vs 72.2%, respec- tively; P=.09). Table 2 shows the results of a multiple logistic regression analysis that included an interaction between tobacco promotion and smoking history. Among stu- dents who did not smoke regularly before 19 years of age, those who were exposed to a bar/nightclub or campus tobacco promo- tion had higher rates of current cigarette use than students who were not exposed to promotions (adjusted OR = 1.73; 95% CI = 1.35, 2.21). In contrast, there was no significant association between tobacco pro- motions and current cigarette use among students who did not smoke regularly before 19 years of age (adjusted OR = 1.10; 95% CI = 0.76, 1.59). Because of the possibility of response bias, we repeated the analyses of the subset of students who attended colleges with re- sponse rates that exceeded 60%. Among this subset of students (n = 2809), exposure to tobacco promotions remained indepen- dently associated with current cigarette smoking (adjusted OR = 1.72; 95% CI = 1.21, 2.45; P = .002) and with past-year cig- arette smoking (adjusted OR = 1.88; 95% CI = 1.32, 2.68; P < .001). To our knowledge, this is the first study that measured young adults’ exposure to a to- bacco industry marketing strategy that has as- sumed greater prominence since the 1998 Master Settlement Agreement. During the first 6 months of the 2000–2001 school year, 8.5% of US college students attended a tobacco industry–sponsored social event where free cigarettes were distributed. Stu- dents at all but one of the 119 colleges surveyed reported attending these events. Bars and nightclubs were the most common set- tings, but students also reported attending events on college campuses, a site that has received less attention and that provides di- rect access to students. Our study shows that there is an associa- tion between attendance at these promo- tional events and tobacco use. It has been hypothesized that the tobacco industry’s new promotional strategies have con- tributed to the observed increase in young- adult tobacco use. To date, however, the evidence is only indirect; the introduction of these strategies corresponds temporally with the increase in smoking among young adults.5–7,9 We add to the evidence by showing an association between exposure to the new tobacco promotional events and current smoking. The association remained strong after we adjusted for potential con- founding factors, such as the fact that smok- ers drink more alcohol and are more likely to go to bars. Furthermore, the effect of tobacco promo- tions on smoking behavior was modified by a student’s history of tobacco use before enter- ing college. Nearly 80% of the students had not smoked regularly before 19 years of age. Among this group, students exposed to a to- bacco promotional event had higher odds of being a current smoker at the time of our study. In contrast, students who were already smoking regularly when they entered college continued to smoke at high rates, and attend- ing a tobacco promotional event had no effect on their smoking prevalence. This finding suggests that the tobacco industry sponsor- ship of social events may be encouraging the initiation or the progression of smoking among young adults. Between 1988 and 1998, the tobacco in- dustry shifted its marketing from traditional advertising to promotional activities, such as sponsorship of events.22 Concurrently, substantial tobacco industry resources were spent on marketing research that targeted young adults.9 New promotional strategies in bars, nightclubs, and other venues began in the late 1980s.6–8 The extent of young adults’ exposure to these activities has been unclear. Our study shows that these promo- tional events have already reached students at nearly every college in our sample. This is a broad base from which promotional activi- ties can be expanded to reach an even larger proportion of college students in the future. Industry documents show that bar and night- club promotions are a key marketing strat- egy, and these promotions are among the few promotional activities permitted by the 1998 Master Settlement Agreement. The success of these tobacco industry promotions in reaching college students may provide an inroad to a group of young adults who histor- ically have lower tobacco use rates than their non-college peers. Tobacco industry promotions were much more common in urban areas, perhaps be- cause of the greater density of bars near these campuses, and in the South, particularly in the major tobacco-producing states. As would be expected, students reached by pro- motions in bars and nightclubs were those who frequented these venues, drank more heavily, placed a greater value on attending parties, and were of legal drinking age. In contrast, tobacco promotions at campus social events reached students in all grades equally. Thus, they provided a way for tobacco mar- keters to access students under 21 years of age who are more difficult to reach at bars. The finding that tobacco promotions reached Asian American students disproportionately was unexpected and needs to be confirmed in future research, because there is evidence that the tobacco industry has targeted Asian Americans in other settings.23

#### Prefer this evidence on method and scope

**Rigotti et al:** Nancy A. Rigotti and Susan E. Moran [Nancy A. Rigotti and Susan E. Moran are with the Tobacco Research and Treatment Center, Division of General Medicine, Massachusetts General Hospital and Harvard Medical School, Boston, Mass. Henry Wechsler and Nancy A. Rigotti are with the Harvard School of Public Health, Boston. ] *“*US College Students’ Exposure to Tobacco Promotions: Prevalence and Association With Tobacco Use.” *American Journal of Public Health.* January 2005. RP

**The 2001 Harvard School of Public Health College Alcohol Study (CAS) surveyed a random sample of students enrolled in 120 four- year US colleges and universities.14 Each school provided a list of 215 randomly selected students from all full-time undergraduates during the 2000–2001 school year.14,15 The 120 schools were a subset of the 140 schools selected in 1993 as a nationally representative sample of US colleges and univer- sities**.15 In 2001, 20 schools could not provide a student sample within acceptable time limits and were excluded. One additional college was excluded from analysis because its re- sponse rate was substantially lower than other schools’. **The 119 colleges in the sample were lo- cated in 38 states and the District of Colum- bia. Sixty-nine percent of respondents at- tended public colleges**, and 31% attended private colleges; the US distribution of full- time 4-year college students is similar (67% and 33%, respectively).13 Forty-seven per- cent of respondents attended large colleges ( > 10 000 students), 23% attended me- dium-sized colleges (5001–10 000 stu- dents), and 29% attended small colleges (< 5000 students); the US distribution is 37%, 24%, and 40%, respectively.13 Large colleges are overrepresented in the CAS sample because colleges were selected with probability proportional to size. Sixty-nine percent of respondents attended schools in large or medium-sized cities compared with 71% of students nationwide, and 13% of re- spondents attended schools with a religious affiliation compared with 16% of students nationwide.

#### Possible counterplan text

**Rigotti et al:** Nancy A. Rigotti and Susan E. Moran [Nancy A. Rigotti and Susan E. Moran are with the Tobacco Research and Treatment Center, Division of General Medicine, Massachusetts General Hospital and Harvard Medical School, Boston, Mass. Henry Wechsler and Nancy A. Rigotti are with the Harvard School of Public Health, Boston. ] *“*US College Students’ Exposure to Tobacco Promotions: Prevalence and Association With Tobacco Use.” *American Journal of Public Health.* January 2005. RP

**Our findings call attention to a tobacco marketing strategy that is reaching college students across the United States and may be encouraging them to use tobacco. The potential for these tobacco promotions to spread more widely and to target more college populations is great, because these promotional events have already reached most colleges and are among the few promotional strategies allowed in the wake of the 1998 Master Settlement Agreement.** They clearly deserve further investigation. Future work should ex- amine both the effect of exposure to tobacco promotions on all young adults, including those who do not attend college, and the association between exposure to tobacco promotions and tobacco use in longitudinal studies. Our findings have implications for universities, states, and communities. **Colleges and universities should be alert to tobacco industry sponsorship of events on their campuses. As the American College Health Association and American Cancer Society recommend, colleges should ban the free distribution of tobacco products on campus, including distribution to fraternities and sororities, and prohibit tobacco industry sponsorship of social events held by any organization that receives college funds**. States and communities already have a good reason for adopting smoking bans in bars and nightclubs: eliminating expo- sure to secondhand smoke.25,26 Our findings provide an additional rationale for adopting these policies: tobacco promotions are likely to be less successful in a smoke-free bar or nightclub, because smoking would not be modeled as an integral part of this social activity. Decoupling smoking and drinking will likely be an effective way to counteract the tobacco industry’s marketing strategies.

### Ames

#### The tobacco industry is hugely exploitative, and aims to kill off billions of poor and black people.

**Ames:** Ames, Mark [Contributor, Pando] “’The poor, the young, the black and the stupid’: Inside Big Tobacco's plans to kill a billion people.” Pando. June 2015. RP

“**The world’s most widespread, serious infection is purposely spread by its vector: the tobacco industry. Rather than a tiny insect, this vector has economic resources rivaling those of many of the world’s largest governments. Its spread is mapped out in mahogany-lined boardrooms; it breeds its resistance to countermeasures in political backrooms; and it seizes its victims in adolescent bedrooms.**” —Eric LeGresley, World Health Organization The Legacy Tobacco Documents Library (LTDL) at the University of California, San Francisco is a digital House of Corporate Horrors; an open black box offering the public access to nearly 15 million searchable documents -- over [88 million pages](https://industrydocuments.library.ucsf.edu/tobacco/about/data/) in total -- direct from the private vaults of the Big Tobacco companies. These documents offer an unvarnished view into the deadliest and most outrageous business conspiracy in history. **Tens of millions of people dead, for tens of billions in Big Tobacco profits. Most of those deaths were easily preventable and might actually have been prevented but for this conspiracy**. It’d be hard to believe if it weren’t all there in black and white: **Secret programs to spike and freebase cigarettes in order to hook smokers for life, massive marketing campaigns aimed at hooking underage smokers and at confusing and tricking the public, and untold billions more spent bribing the media, science, academics, and politicians in order to keep the tobacco profits rolling on**. You also find the names of all sorts of respectable journalists, political figures and nonprofit charities who cut secret deals with Big Tobacco to help them continue profiting off mass-death. The newest [3.0 version](https://industrydocuments.library.ucsf.edu/tobacco/) of the digital Tobacco Library has just gone live, the most advanced version yet of its online collection—and the most important collection of leaked secrets anywhere in the world. There are a lot of things I like about the Tobacco Library story—it’s one of those rare stories in which good really does triumph over evil, in which the work of heroes will save the lives of literally tens of millions of people, and for me it’s a rare story in which I get to talk up the good that tech can do. It’s thanks to technology that tens of millions of these company documents are open to researchers and journalists—a raw look into the bowels of corruption. These documents have helped shaped anti-smoking laws around the world and saved countless people from a painful, drawn-out death in the process. Before getting into the tech side of this story, it’s important to understand the stakes in the tobacco conspiracy: **Every year, cigarettes still kill roughly 480,000 Americans. Worldwide, tobacco kills six million people per year. In all, tobacco killed over 100 million people in the 20th century, and cigarettes are expected to kill 1 billion people worldwide this century. There is nothing to compare to that death toll in all of human history, not even guns or nukes or the deadliest wars.** Whereas tobacco brings nothing but misery for profit, at least you can say that some wars have achieved a greater good—defeating fascism, liberating oppressed groups. The one persistent argument made in tobacco’s defense  -- an argument heavily funded and promoted by Big Tobacco -- is the false idea that those millions killed by smoking did so by their own “choice.” Leaving aside the billions spent by Big Tobacco over the years to distort and conceal the medical science on tobacco, there are a few problems with that rationale, many of them helpfully revealed by the LTDL documents. Murder, They Wrote **In America, 50,000 people die a year from second-hand smoke; worldwide over 500,000 people die a year from second-hand smoke, which obviously wasn’t their choice**. Many of those who develop second-hand smoke diseases were exposed as infants or children, or in their workplaces; Tobacco documents reveal that the companies focused their efforts on getting “presmokers” under the age of 18 addicted, because “presmokers” are far more likely to become addicted for life to nicotine than people who start smoking later in life. Tobacco documents reveal that this target demographic is called “learners,” “replacement smokers,” “starters,” and “tomorrow’s cigarette business”; American Tobacco’s undercover operative proposed publishing articles to discredit an anti-tobacco scientist in a newspaper that no one would trace to the tobacco industry. Up to 90 percent of smokers are addicted, meaning they have no choice. By comparison, only 3 percent of those who drink alcohol are addicted. 81 percent of smokers say they regret having started smoking and cannot quit. Most addicted smokers started smoking between the ages of 13 and 15. Philip Morris conducted secret pharmacological studies about children and smoking in reports titled “Aggressive Monkeys” and “Hyperkinetic Child as Prospective Smoker”; Tobacco companies spike cigarettes with ammonia to create “crack nicotine” in order to maximize addiction; **Tobacco companies also targeted disadvantaged communities, including African-Americans and other minorities, and the mentally ill, because they too were more vulnerable to becoming lifelong cigarette addicts**. RJR Reynolds once ran a marketing campaign for Camel cigarettes in San Francisco code-named “Project Scum” targeting the homeless, alcoholics, and drug addicts; By the 1970s, tobacco companies started heavily targeting lower-income groups. A 1978 Philip Morris marketing memo argued for pouring more money into sponsoring NASCAR races over sponsoring the arts: “The most important problem I see with sponsorship of the arts is that it reaches the wrong target group. In the main the arts are more of interest to the A/B class than to the lower social classes C and D. Smoking is becoming more and more a C/D class habit... sport sponsorship fits the class and mass exposure criteria much better, and therefore sells more cigarettes per $ spent”; A Lorillard Tobacco Company memo from 1978 reads, "we must continually keep in mind that Newport is being heavily supported by blacks and the under 18 smokers". **In the late 50s, Lorillard pushed menthols on African-Americans by driving trucks full of Newports into urban housing projects and distributing them to blacks for free “like ice-cream trucks**.” Other code words for targeting minority communities with tobacco included “BHM” (Black + Hispanic market); **A 1970 Lorillard memo titled “Why Menthols?” explains how menthol cigarettes were marketed to exploit racist myths for profit:** Negroes, as the story goes, are said to be possessed by an almost genetic body odor. Now whether or not this is real is irrelevant. More importantly, Negroes recognize the existence of this “myth.” And they realize that “Whitey” does too. Now what does this have to do with menthol cigarettes? Here’s the theory: Negroes Americans smoke menthols to make their breath feel fresh. To mask this real/mythical odor. Let’s examine this theory a little... Jews, according to an RJR memo, “tend to gravitate towards lower tar brands”; while a 1973 Lorillard memo divided female smokers into eight segments on a sliding scale, from “Emotional Bra-Burning Extremists” and “Blatant Lesbians” to “traditional Women” and “Anti-Libbers.” A 1978 Lorillard memo to the company president about its best-selling brand, Newport, reads: The success of NEWPORT has been fantastic during the past few years. Our profile taken locally shows this brand being purchased by black people (all ages), young adults (usually college age), but the base of our business is the high school student. Lorillard’s biggest worry was the possibility that these fickle youngsters might quit, despite being the most prone to becoming addicts until death: “I think we must continually keep in mind that Newport is being heavily supported by blacks and the under 18 smokers. We are on somewhat thin ice should either of these two groups decide to shift their smoking habits.” Reynolds, maker of Marlboros and Camel, made explicit in their memos the need to hook young teens. A 1975 Reynolds memo, stamped “SECRET,” concluded, To ensure increased and longerterm growth for Camel Filter, the brand must increase its share penetration among the 14-24 age group which have a new set of more liberal values which represent tomorrow’s cigarette business. **These are not accidents, as the tobacco library reveals, but rather carefully plotted designs by some of the most profitable corporations in history. It is a profit model that is like a dream come true for the most bloodless capitalists. Warren Buffett, the second richest man in the world and darling to some of the more gullible liberals,** [**explained why**](http://articles.baltimoresun.com/1994-05-30/business/1994150090_1_tobacco-rjr-nabisco-cigarette) **he purchased a large 5 percent stake in RJR Reynolds and took a board seat at the tobacco giant: I’ll tell you why I like the cigarette business. It costs a penny to make. Sell it for a dollar. It’s addictive**. New York Times columnist Bob Herbert in 1993 thrashed some of the leading African-American charities that took Philip Morris’ blood money to help launder the tobacco giant’s reputation—NAACP, the Urban League, and the United Negro College Fund were among those he named. (More recently, the United Negro College Fund sparked controversy when it took [$25 million](http://www.salon.com/2014/07/25/koch_brothers_new_racial_gambit_whats_really_behind_a_quiet_battle_with_afscme/) from the [Koch brothers](http://www.salon.com/2014/09/04/exclusive_new_secret_koch_tape_reveals_united_negro_college_fund_plot/), longtime allies of Big Tobacco and leading funders of climate change deniers). Herbert quoted the once-ubiquitous Winston Man from the magazine ads, David Goerlitz, who recounted what a Reynolds executive told him during a photo shoot: Goerlitz asked the executive during a break if he or his Reynolds colleagues smoked, to which the Reynolds exec shook his head, and [replied](http://www.nytimes.com/1993/11/28/opinion/in-america-tobacco-dollars.html), Are you kidding? We reserve that right for the poor, the young, the black and the stupid.

### Hollerbach

#### Tobacco ads appear in student newspapers

**Hollerbach:** Hollerbach, Karie “Tobacco Goes to College: Cigarette Advertising in Student Media, 1920-1980.” 2014. RP

**In Tobacco Goes to College, author Elizabeth Crisp Crawford carefully examines the symbiotic relationship between the state of cigarette use on college campuses from 1920 to 1980 and the tobacco industry's relentless promotional efforts to maintain and grow this use. Crawford frames her inquiry and analysis through a three-part lens: the historical and legal exploration of cigarette advertising in the student press, the advertising strategy and placement methods employed by individual cigarette brand advertisers, and a review of recurring advertising themes used in campus advertising and other media that supported the cigarette brands' broader marketing initiatives.** Cigarette consumption in the United States was just 2 percent of the tobacco industry in 1900. It was 40 percent by 1930 and smoking on college campuses did affect overall use as tobacco and intellectualism had enjoyed a long association. What really tipped the scales was the acceptance of women smoking in public places, with any opposition to lighting up on campus disappearing in the 1940s. **The first national cigarette ads appeared in college newspapers in the 1920s and were centered on a social strategy of friendship and acceptance. By the 1930s, cigarette advertising in many student newspapers doubled and highlighted the glamour and sophistication of smoking along with its sensory experience as a means of escape. Enter the tobacco industry again, fresh from its successful World War II cigarette campaigns, as it goes back to college via any means it can; employing students to promote smoking on campus by distributing free cigarette samples, sponsoring contests to increase cigarette use, funding faculty and student research on tobacco uses and gratifications, and supporting student newspapers through advertising placements that eventually account for 40 percent of their national advertising. The ads themselves were part of some of the best campaigns developed in the 1950s, utilizing cutting-edge market research done with college students on campuses nationwide and implemented by the best advertising agencies on Madison Avenue.**

### ALA

#### College smoking is on the rise, due to advertising on campus done by the tobacco industry.

**The ALA:** The American Lung Association [Organization dedicated to awareness and activism surrounding lung cancer] “Big Tobacco on Campus: Ending the Addiction.” *American Lung Association.* August 2008. RP

**Marketing tobacco products to college-age young adults remains a priority of the tobacco industry, as evidence from the major cigarette companies’ reports to the Federal Trade Commission show**. The five biggest cigarette companies have shifted their marketing substantially in the U.S. in the last ten years. **Tobacco advertising rose 20 percent alone in 1999, or from $6.9 billion to $8.4 billion in one year. By 2005, the latest year for which data are available, the companies spent $13.11 billion marketing cigarettes**. Consuming the lion’s share of their marketing—at over $10.6 billion in 2005—were industry tools that counteract higher taxes and reduce the price pressures that both prevent young people from starting to smoke and move smokers to quit—price discounts and coupons.26 By 2005, the companies had decreased their spending on magazine and newspaper advertising and free cigarette samples distribution (although newspaper and magazine marketing of menthol cigarettes has increased27) as the audience for print media has declined. **The new emphasis in spending by the companies in mid-decade was in areas that would reach the young adult market: adult entertainment events (e.g., sponsoring bar nights and adult music concerts) and “specialty item distribution.” The spending on entertainment events rose to $214.1 million in 2005 from $140 million in 2004, although entertainment expenditures had been over $312 million in 2001. The $230.5 million spent in 2005 on “specialty item distribution” included both branded and unbranded products, such as T-shirts, caps, sunglasses, key chains, lighters and sporting goods, marketed in connection with cigarettes, sometimes even bound together with the packs themselves. Tobacco companies’ highly developed research practices allowed them to de ne a robust market for their products among college students. Exploring the industry’s own documents, now in archives, researchers identifed clear evidence that the industry targeted these young adults as part of their cultivation of new pack-a- day smokers.29 The industry recognized that young adults are going through a transition period in their life, moving from high school to college or to work, a prime time for developing and cementing new behaviors, including smoking**. Tobacco companies exploit this vulnerability by sponsoring promotions in bars, nightclubs, and other places young adults socialize to encourage smoking as a social norm, moving them from an “experimenter” to “mature” smoker. Evidence shows how the tobacco industry carefully plotted to transform occasional smokers to regular, daily smokers, even targeting different brands to each smoking stage. **Industry promotion has penetrated student awareness. During the rst six months of the 2000-2001 school year, 8.5 percent of U.S. college students in one large survey reported attending a social event sponsored by the tobacco industry where free cigarettes were distributed. Students at 115 of the 119 schools participating in that survey reported seeing tobacco promotions at a bar or nightclub. Students at 109 schools reported seeing tobacco promotions in an event on campus.31 Such tactics succeed in encouraging a signi cant number of college students to start and continue smoking. For example, a 2007 study found that alcohol use and membership in social organizations, like fraternities and sororities, proved to be a consistent link to smoking initiation in college, a link other studies have also found**.32 Those behaviors indicate that they are more likely to have attended bars, nightclubs or other social events where tobacco marketing was present. That 2007 study found that 13 percent of students started smoking in college. A 2004 study found that 11.5 percent of college students started smoking occasionally over the course of their four years in school.34 Additional findings from that study indicate 87 percent of daily smokers and 50 percent of occasional college smokers continued to smoke four years later. However, 28 percent of daily smokers reduced but did not quit smoking during the study, indicating that smoking behavior of college-age adults is more fluid—switching more easily between daily and occasional smoking—than that of older adults. This finding indicates a key opportunity to intervene and reduce smoking among young adults by implementing smokefree policies and offering targeted smoking- cessation programs.

#### Counterplan text

**The ALA:** The American Lung Association [Organization dedicated to awareness and activism surrounding lung cancer] “Big Tobacco on Campus: Ending the Addiction.” *American Lung Association.* August 2008. RP

**Colleges and universities have a responsibility to provide safe spaces in which their students can learn and live. This should include an environment free of tobacco smoke and advertising that encourages young adults to use tobacco products. Based on the review of science, literature and trends related to smoking among college students, the American Lung Association recommends the following policies to all colleges and universities**. All college and university campuses should completely prohibit tobacco use, including all indoor and outdoor facilities, private of ces, residence halls and dormitories. Tobacco use in outdoor areas should be prohibited to reduce the social acceptability of tobacco use and encourage quitting. This should include building entrances, stadiums, other public spaces and buses, vans or other campus vehicles. **Colleges and universities should prohibit the sale or advertising of tobacco products on campus or in college-controlled publications, properties, events, or environments, including free distribution of tobacco products.** Colleges and universities should refuse to accept funding, including research and sponsorship funding, from the tobacco industry.

### Morrison

#### The Confederate flag on campus normalizes violence against Black students – it inspired Dylan Roof and is a symbol of antiblackness

**Morrison:** Morrison, Aaron [Writer, International Business Times] “Confederate Flag Controversy: More US Schools Consider Bans On Display Of Southern Symbol As Charleston Unveils New Policy.” *International Business Times.* August 2015. RP

**Weeks after a white gunman opened fire in a historic black church in South Carolina, the Charleston County School District this week updated its code of conduct for the 2015-2016 school year, which began Monday, to include a ban on the Confederate flag**. The policy prohibits students from wearing clothing, jewelry or other apparel featuring images of the rebel banner. District officials said the policy change was made “in light of a year marred with racially divisive and tragic events,” the Charleston Post and Courier reported Tuesday. The ban also covers prominent displays of the flag on vehicles driven to and parked on school grounds. **Schools across the South and throughout the country are spelling out their Confederate flag policies amid a national discussion about whether all public displays of the emblem should be taken down to help heal long-standing racial wounds. Opponents of the rebel banner said it represents hate among blacks and whites because of how modern white supremacist groups have embraced it, and could send a message of disrespect to black students and their families**. Some school officials who have defended the flag, however, insist that banning it would violate First Amendment rights. **A debate is unfolding in the aftermath of a hate-fueled shooting earlier this year in Charleston, South Carolina, that saw a Confederate flag supporter shoot dead nine black parishioners in a historic African-American church**. Support for Confederate flag bans in public schools is mixed, even after the South Carolina tragedy. That was evident at last month's convention of the National Education Association in Orlando, Florida. The union's delegates unanimously supported a broadly worded resolution committing the organization to fighting institutional racism, only to hold a lengthy and contentious debate over a separate measure about bans on Confederate flags in public schools, Education Week reported. The measure passed by a voice vote of about 7,000 delegates. School officials in places such as New York, Massachusetts, Texas and Florida have been dealing with the use of Confederate flags and racially offensive symbols for years, but the debate has found new life after the Charleston shooting. A high school in Rutherford County, Tennessee, last week refused to ban the Confederate battle flag from being displayed on campus, even after a black student expressed discomfort at the sight of it, according to a report by local ABC affiliate [WKRN-TV](http://wkrn.com/). Meanwhile, students in Hamblen County, Tennessee, schools are being told to leave their Confederate flags at home, local CBS affiliate WVLT-TV reported. In June, a school board committee in Arkansas voted to change Southside High School’s “Rebels” nickname and stopped using the Confederate anthem “Dixie” as its fight song. **Petitions quickly sprang up online with people pushing for and against the ban. Sam Odle, vice president of Indianapolis Public Schools, a district of more than 23,000 students that has faced problems of segregation and inequality for African-American students, said there is too much at stake to allow Confederate flags to derail learning opportunities for disadvantaged students. White students in the U.S. have long outperformed black students regardless of income level, and education activists said the achievement gap has persisted because of enduring social justice inequalities, among other factors. “Any kind of symbol that would create an unsettling environment toward students is something that we would be opposed to,” said Odle, who is African-American. “If we don’t educate kids successfully, we know we are just sentencing them to a life of poverty and other problems. And that’s really immoral.” Dylann Roof, the white man charged in the Charleston deaths, of nine African-American members of the Emanuel AME Church in June, had posted photos of himself online waving the Confederate flag**. State lawmakers in South Carolina voted to remove the flag from its perch on statehouse grounds last month, as [other municipal and state officials](http://ibtimes.com/confederate-flag-debate-update-california-lawmakers-urge-other-states-remove-southern-2058176) in the U.S. considered removing their symbols.

#### Bans on the Confederate flag on campus infringe upon the First Amendment and are only allowed if they pose an imminent threat of violence.

**Morrison:** Morrison, Aaron [Writer, International Business Times] “Confederate Flag Controversy: More US Schools Consider Bans On Display Of Southern Symbol As Charleston Unveils New Policy.” *International Business Times.* August 2015. RP

**Opponents of policies banning the symbols in schools have asserted that bans send the wrong message to students about the First Amendment’s free speech protections**. The First Amendment Center, a Washington, D.C., area-based nonprofit advocating awareness of constitutional rights in schools, said educators should [ban and discipline](http://www.firstamendmentschools.org/freedoms/faq.aspx?id=12826) students for wearing or displaying Confederate symbols if they “can reasonably forecast that the wearing of the Confederate flag will lead to a substantial disruption of the school environment.” **While U.S. District Courts have backed school bans of racially divisive symbols when they've been challenged in the last decade, some bans have been struck down for not applying evenhandedly to other potentially offensive symbols**, the Center said. After the Charleston shooting, school officials across the country should clarify their policies on the flag and find teachable moments in the controversy, said Kenya Campbell, secretary of the American Federation of Teachers’ [union](http://md.aft.org/news/retreat-focuses-new-strategies-effectiveness) in Maryland. “Schools are sometimes forced to carry the heavy burden of taking on social issues that find their way into our classrooms,” Campbell said. “When considering recent bans on student displays of the Confederate flag, the goal is to keep our schools safe and free of unnecessary distractions that could lead to detrimental events.” Confederate symbols are more visible in Hurley, Virginia, a small rural town of 23,000 that is 96 percent white and 2.9 black, than in other communities that have considered or instituted bans. The local high school’s teams are known as the Rebels and the school logo features a Confederate flag waving from a sword. “Since all of this has come about, our community has stood behind the logo and the flag,” Hurley High principal Pamela Dotson [told](http://www.breitbart.com/sports/2015/07/10/high-schools-keep-kill-confederate-symbolism/) The Huffington Post last month. “If you did a survey, I doubt you’d find a single person who’d want to change it.”

### Dolgenos

#### Conservative campus journals write clickbait articles about PC culture that get spread across the internet and harass students – this is protected as free speech [either a pic or a disad]

**Dolgenos:** Dolgenos, Kate [Kate Dolgenos PO '17 is TSL's Opinions editor and a politics major from Philadelphia, Pennsylvania. She wears better shoes than you.] “Right-wing Campus 'Journalism' Goes Too Far.” The Student Life, Pomona College. March 9, 2017. RP

**Right-wing college journalists have developed a highly effective modus operandi for getting the maximum amount of fame and notoriety from a controversial article**. We all know the drill. **The journalists zero in on an aspect of so-called 'PC culture' that seems excessive**. They write and produce an easy-to- digest article, often with quotes **and screenshots lifted from students' personal social media pages, then slap it with a provocative headline. When it has been posted on Facebook and their outraged relatives have commented on it, the journalists forward their article to their contacts at national conservative news outlets that specialize in clickbait, such as The Daily Wire, TheBlaze, and The Weekly Standard. The article is then picked up by more prominent news outlets, such as Fox News and The National Review** (Katherine Timpf, a reporter for The National Review Online, almost exclusively covers anecdotes about political correctness on college campuses.) **Conservative student writers have a lot of incentives to produce this type of content**. Writing articles that go viral (or, better yet, having a leadership position on a conservative news outlet with nationwide readership from clickbait stories) looks good on their resumes. And it's important to note that, despite popular perception, these students are not morally bankrupt; they believe they are saving free speech and political discourse. **Regardless of your opinions on political correctness, this brand of clickbait conservatism is morally indefensible. The pieces run by right-wing college media often carelessly include names or personal information of the students involved in PC culture's excesses, making them vulnerable to online harassment.** The problem is particularly acute if the article contains screenshots from social media, making it even easier to track down the subjects of the piece online. **Comment sections on articles dealing with political correctness are filled with vitriolic racist hatred aimed at the "snowflakes" perpetrating PC culture**. In one recent Facebook comment section on the Claremont Independent's page, commenters referred to students as "black b\*tches" and "racist b\*tches," white women who had engaged in cultural appropriation were instructed to tell students of color to "eat sh\*t and die," and a student of color was threatened by someone who wanted to hit them "across their racist b\*tch face**." Citing free speech, the outlets that publish articles decrying political correctness typically refuse to delete or censor racist, sexist, or otherwise deplorable comments.**

#### They get no offense – these articles have 0 truth value and are just sensationalist – they add *nothing* to the conversation and drown out reasoned dialogue.

**Dolgenos:** Dolgenos, Kate [Kate Dolgenos PO '17 is TSL's Opinions editor and a politics major from Philadelphia, Pennsylvania. She wears better shoes than you.] “Right-wing Campus 'Journalism' Goes Too Far.” The Student Life, Pomona College. March 9, 2017. RP

**Even if you hate PC culture, you can object to the shoddy way that campus conservative news outlets smear their opponents. Personally, I believe that most of these anti-PC culture articles are sensationalist and overblown. Often, they are collections of quotes taken out of context and curated to engender maximum outrage from online conservative audiences**. Conservatives, however, are in near-universal agreement that political correctness and censorship on college campuses have reached absurd heights. **But what is more immoral, writing an article about culturally appropriative food in Oberlin's dining halls or doxing students of color and subjecting them to racist online harassment (even death threats, in some cases) for voicing their political views?** Why have conservatives suddenly lost sight of what is important? I do not want to downplay conservative concerns about free speech on liberal college campuses. **It is impossible to have a productive discussion when any opinions that dissent from the far-left political mainstream are ignored, something that happens too often here**. Revealing oneself to be a Republican, or even a moderate with reservations about PC culture, leads to open mockery, social ostracization, and a complete dismissal of one's views. I am a mainstream liberal, but because I am an outspoken Zionist, strangers in Claremont sometimes feel it is appropriate to interrogate my best friends about why they associate with me. Unsurprisingly, they treat actual conservatives like human scum. Republican students in Claremont are mocked in secret Facebook groups, harassed in public spaces, and roasted on anonymous meme pages**. It is easy to see why conservative student writers would believe that PC culture is evil and focus on writing clickbait condemnations of political correctness, rather than serious pieces about conservative ideas**. But the fact that people who dissent from the political mainstream here are treated unjustly does not excuse doxing ultra-liberal students, nor does it mean all politically correct arguments are stupid. **Right-leaning opposition on campus is sorely needed, but this opposition should not be in the form of screenshot collections designed to mock PC culture**. If they must constantly write about PC culture, Republican student outlets should produce intelligent arguments refuting political correctness. It would be even better if conservative outlets were to focus on conservatism, rather than juvenile mockery of their fel- low students. Conservative student journalists should produce national stories, make a strong case for free markets, and advocate limited government. Nobody wants to read another million articles implying that students of color are idiotic for not wanting their peers to wear sombreros on Halloween, especially if those stories violate students' privacy or subject them to racist abuse. These students deserve better - and frankly, so does the conservative movement.

### Rael

#### The Constitution is rooted in a legacy of racism – enshrined in it were principles that allowed slavery to exist.

**Rael:** Rael, Patrick [Professor, Bowdoin College] “Racist Principles: Slavery and the Constitution.” September 2015. RP

According to Sean Wilentz’s opinion piece in the September 16 New York Times, the Constitution of 1787 did not make slavery a national institution. The noted American historian cites the anxiety of some of the founding fathers over slavery to counter “one of the most destructive falsehoods in all of American history,” the claim that our national government was established on “racist principles.” Wilentz is wrong. **The Constitution incorporated slavery into our national system of governance. If slavery was not legal in every state, it was nonetheless “national law,” protected and upheld by the Constitution**. Wilentz badly misinterprets the antislavery sentiment evident at the constitutional convention of 1787. In his version of history, if most of the Framers did not explicitly defend slavery, they must have stood against it. And if the slaveholders did not get everything they wished, they must have lost. In other words, if the glass was not empty, it must have been full. But for the first eight decades of our country’s life, the devil’s bargain struck in 1787 warped almost every aspect of national politics and national life. American Revolutionaries constantly invoked a freedom-bondage binary they knew well. “We must assert our rights,” George Washington declared in 1774, “or Submit to every Imposition that can be heap’d upon us; till custom and use, will make us as tame, & abject Slaves, as the Blacks we Rule over with such arbitrary Sway.” As they envisioned themselves as slaves to tyrannical Britain, the founders also understood that their own practice of slavery badly undermined their justification for revolutionary violence in defense of freedom. Wrote New York’s John Jay, “To contend for our own liberty and to deny that blessing to others involves an inconsistency not to be excused.” But when delegates met in Philadelphia to draft a new constitution in 1787, they never considered ending the right of property in man. And once slavery entered the new nation by default, the institution could not simply be ignored – it had to be actively protected. How did this apparent contradiction come to pass? **James Madison’s record of the constitutional convention reveals how delegates from slaveholding states held the Union for ransom, repeatedly demanding that unless they received constitutional guarantees for slavery, they “would never confederate” and that “the business [of the convention] was at an end.” Non- slaveholding delegates capitulated, declaring that while they might personally oppose servitude, they “thought it more in favor of humanity” to concede to the slave states rather than exclude them from the Union. As a result, the new national government explicitly upheld the peculiar institution. The “three-fifths clause” of the Constitution disproportionately empowered the slave states by permitting them to count 60 percent of their slave populations for apportionment in the House of Representatives and the Electoral College. For the next seventy-three years, the slave states enjoyed an artificial boost of 10 to 12 percent in these bodies – hardly the “consolation prize” Wilentz terms it.** The margin of advantage they gained permitted the election of Thomas Je erson to the presidency in 1800, and the passage of key pieces of pro-southern legislation such as the Indian Removal Act of 1830. **Another section of the Constitution prohibited Congress from outlawing the trade in slaves to American shores for two decades**. This constraint on national lawmakers heavily favored the slave states by protecting their right to import humans – a notable victory given the strength of sentiment in Congress against the trans-Atlantic tra c in human flesh. James Madison was correct in predicting that “twenty years will produce all the mischief that can be apprehended from the liberty to import slaves.” **The period from 1787 to 1808, when Congress did in fact end the trade, brought some 75,000 Africans to American shores, more than 20 percent of the entire volume of the trade to mainland British North America**. Yet another gift to slaveholders appeared in a clause in the Constitution guaranteeing that enslaved people who fled from a slave state to a free one would be “delivered up” to their claimants. More than any other, this provision required the federal government not simply to condone slavery but actively uphold it. Whereas in Great Britain merely stepping foot on free soil rendered an enslaved person free, this was not so in the United States. Here, the federal government acted decisively to protect slavery in the nation even where it had been outlawed. In 1793 Congress enacted a law to enforce the fugitive slave provision of the Constitution, guaranteeing slaveholders the right to claim their human property on free-state soil. When in later decades northern consciences resisted the measure, Congress passed the notorious Fugitive Slave Law of 1850, which historian Eric Foner has labeled “the most powerful exercise of federal authority within the United States in the whole era before the Civil War.” Seven years later, the Supreme Court’s ruling in the Dred Scott case prohibited Congress from outlawing slavery in federal Territories. Antislavery politicians worried that more looming cases – such as that of the Lemmon slaves of Virginia, who sought their freedom upon landing on New York soil – might have nationalized slavery had not the Civil War intervened. If the right to enjoy human property could not be denied in the Territories, why should it be in the free states? In the wake of the Dred Scott decision, Abraham Lincoln worried that “what Dred Scott’s master might lawfully do with Dred Scott, in the free State of Illinois, every other master may lawfully do with any other one, or one thousand slaves, in Illinois, or in any other free State.” What did opponents of slavery at the Constitutional Convention get in exchange for these enormous concessions to slaveholders? Not much, other than the absence of literal references to “slavery” or “slaves” in the document. Instead, it features euphemistic phrases such as “persons held to Service or Labour” or “all other Persons.” This was as much antislavery as the Framers could muster. Northern delegates such as Elbridge Gerry of Massachusetts thought the convention “ought to be careful not to give any sanction” to slavery. Madison, the Virginia slaveholder, declared that he “thought it wrong to admit in the Constitution the idea that there could be property in men.” This absence was not nothing, for it at least permitted following generations to argue endlessly about how the Constitution promoted or censured slavery. **If in the 1830s the abolitionist editor William Lloyd Garrison could label the Constitution “a Covenant with Death, an Agreement with Hell,” others could claim something else**. That debate was even possible suggested that the political system itself might provide an avenue for change. The Liberty, Free Soil, and then Republican parties arose, all of which claimed that the Constitution protected slavery only in the states where it existed, and not in the western Territories. As Abraham Lincoln would put it in 1860, the Framers viewed slavery “as an evil not to be extended, but to be tolerated and protected only because of and so far as its actual presence among us makes that toleration and protection a necessity.” When this argument placed Lincoln in the White House, the slaveholding states sundered the Union, and brought on the war that destroyed the very institution they seceded to protect. In 1787, when nearly 300,000 people of African descent populated every state in the new nation, many leaders hoped that slavery would decline by, as George Washington put it, “slow, sure, and imperceptible degrees.” The hope was vain. Eventually, of course, slavery did end. But the cost of the delay was horrific. The document the founding fathers created consigned millions of human beings to chattel bondage. In the seventy-eight years between the drafting of the Constitution and the end of the Civil War, the United States became the pre- eminent slaveholding nation in the world, with a larger bound population at the moment of emancipation – 3.9 million – than any other in history. The founding fathers’ temporizing also cost the lives of hundreds of thousands who died in the war that finally destroyed slavery in the United States. **And it created a legacy of racism and discrimination that continues to haunt our national life today.** We can laud a Constitution that has proven itself to be, in Franklin Delano Roosevelt’s words, “flexible enough to meet any new problem of democracy.” But if we can we agree that slavery was a racist institution, and that the Constitution created the United States, then the United States was indeed created on “racist principles.” Bernie Sanders may be sorry to say it, and Sean Wilentz might not like hearing it. But rather than turn from it, we might embrace the opportunity to confront that terrible truth with rectitude.

### Rychlak

#### Bans on Confederate flags violate the First Amendment

**Rychlak:** Rychlak, Ronald J. [Associate Professor, The University of Mississippi School of Law; B.A., Wabash College; J.D., Vanderbilt University] “ESSAY: CIVIL RIGHTS, CONFEDERATE FLAGS, AND POLITICAL CORRECTNESS: FREE SPEECH AND RACE RELATIONS ON CAMPUS.” *Tulane Law Review.* May 1992. RP

-Any action against flag violates First Amendment

-Only possible solution is CP

**Not long ago, several members of the law faculty sat around discussing the Confederate flag, how it offended minority students, how it impacted adversely on the school's reputation, and how we might try to limit or even eliminate its use**. A boycott of stores that sold the flag did not seem to be a realistic solution. At least one store (probably several) would continue selling them. Moreover, those who wave Confederate flags are a very significant minority, if not a ma- jority, of those who attend sporting events here at the University of Mississippi. They would continue to buy flags and support the places that sold them. Thus, a boycott would probably not accomplish our objective. **Other solutions all seemed to have serious First Amendment complications. Debates over display of the Confederate flag here at the University of Mississippi do not usually focus on the First Amendment. Most of the arguments center on politics and tradition. Any regulation of the right to display the flag, however, would have to survive a constitutional challenge in court**. The issue is controversial enough and the emotions run deeply enough that a suit would certainly be brought if a restriction on displaying the flag were put in place. **A flat prohibition of the Confederate flag (even without the potential for incarceration) would have serious constitutional problems. Thus, our task was to find a way to keep people from waving the Confederate flag without offending the First Amendment of the Constitution.**

### Villanueva

#### Empirically campus journalism is a medium for racism

**Villanueva:** Villanueva, Margaret [Margaret A. Villanueva is an assistant professor of anthropology at Northern Illinois University; she is also the Assistant Director for Latino and Latin American Studies and a faculty associate in the Women's Studies Program.] “Ethnic Slurs or Free Speech? Politics of Representation in a Student Newspaper.” *Anthropology & Education Quarterly.* Volume 2, 1996. RP

**In April 1993, at a large public university in the Midwest, a coalition of 150 Latino and African American students organized a sit-in and "throw-away campaign" against the daily campus newspaper in response to racial insults published on its editorial page**. Charges of racism and countercharges of vandalism flew back and forth between the student protesters and the newspaper staff. **A week later, the newspaper's editorial board declared that it would "not apologize for printing the beliefs of its columnists," arguing that they held First Amendment rights to "express themselves freely**." They cited a "nation-wide racial crisis on college campuses" and declared that a student newspaper should not "be used as a scapegoat for a society or for a campus which faces racial tensions" (Midwest Campus News [MCN], 1993). **Reports of similar campus conflicts involving ethnic and racial slurs, and other forms of hate speech appeared in the Chronicle of Higher Education later in April. Protesting student groups had confiscated news- papers and occupied offices of college newspapers in Massachusetts and Pennsylvania.** Sheldon Hackney, then president of Pennsylvania State University, declared that "two important university values, diversity and open expression, seem to be in conflict" (Shea 1993a:All1).2 **These local conflicts over the meaning of ethnic slurs and the parameters of free speech highlight an ongoing controversy over the freedom to represent others in the context of everyday interaction on college campuses, but particularly within institutionally sponsored student activities**

#### Campus newspapers otherize certain ethic groups, creating stigma and integration into campus culture impossible [some k link?]

**Villanueva:** Villanueva, Margaret [Margaret A. Villanueva is an assistant professor of anthropology at Northern Illinois University; she is also the Assistant Director for Latino and Latin American Studies and a faculty associate in the Women's Studies Program.] “Ethnic Slurs or Free Speech? Politics of Representation in a Student Newspaper.” *Anthropology & Education Quarterly.* Volume 2, 1996. RP

**During my first year on the faculty of Midwest University, I read the daily student newspaper with growing dismay. Cartoons and advertisements frequently deployed images of "otherness" derived from the colonial discourse of early anthropology, with "savages" and "wild natives" being the most blatantly racialized**. At Midwest University, the publication of these images coincided with growing student diversity; senior faculty recalled that the newspaper was "even worse" in past years. **I contend that outdated anthropological representations are de- ployed in cartoons to construct negative visions of "otherness" that reinforce a sense of white racial superiority. "Representation" in this sense means to re-present, to present again, carefully selected elements of reality from a singular perspective. A constant re-presentation of particular images and experiences as "real," even in the forms of jokes and cartoons, poses the danger that this will become "reality for us," that facile reification may be accepted as "just the way things are**." Postmod- ern theory posits that "reality is always represented, we cannot access it raw: it never exists in its own terms, but is always 'reality-for-some- one'" (Fiske 1993:150). **Employing representation to produce "otherness" or the "other" who is different from, and inferior to, us has been a key symbolic strategy of modernity, situated within the expansion of Western knowledges and culture**. Anthropology has not been an innocent bystander to this pro- cess. The power to represent is a real power. **Rendering the "other" as exotic, foreign, and different from the self, as a mere "something," is to exercise a "power of representation" over those being produced as others** (Fiske 1993:150; Harrison 1991; Russell 1992:310; Shapiro 1988:100-102). If a daily campus newspaper creates an atmosphere of social segmenta- tion, all readers are affected: While some students are textually posi- tioned as the self, as the "we" or the norm, some are positioned as "others" whose difference reinforces their societal exclusion. **These representational practices and their local effects resemble the way that colonial discourses constructed "other cultures" in order to "separate colonizer and colonized**" (Tsing 1993:15). How were representations deployed and contested during a dispute between protesting students and the Midwest Campus News? Which anthropological images served to separate "self" and "others" in the student press? Who decides what communitywide and educational functions a campus newspaper should serve? How might a campus community encourage diversified news coverage and discourage slurs against racialized ethnic groups in the face of legal decisions that have overturned antidiscrimination codes? These are some of the issues I hope to illuminate by situating a local case study within a broader framework of a national debate and recent critical theorizing

#### Campus newspapers deny and trivialize slavery

**Villanueva:** Villanueva, Margaret [Margaret A. Villanueva is an assistant professor of anthropology at Northern Illinois University; she is also the Assistant Director for Latino and Latin American Studies and a faculty associate in the Women's Studies Program.] “Ethnic Slurs or Free Speech? Politics of Representation in a Student Newspaper.” *Anthropology & Education Quarterly.* Volume 2, 1996. RP

#### 

**Cartoons and editorial columns tended to distort, degrade, or appropriate the symbols of historical social movements, to trivialize the historical tragedy of slavery. A column-filler cartoon that ran several times in spring 1994 shows dark hands in chains and says "brake [sic] your chains." In criticizing a proposal for a breadth requirement in ethnic or multicultural studies, reporters spread the rumor that there would be a new required course added to the curriculum and warned that:If Multiculturalism 100 became a reality ..., (a) newly-established... chapter of the Ku Klux Klan and the newly-formed white student union could be negative reactions yet to come.... Look what happened at the end of the civil war when the North told the South that it had to start playing nice with blacks**. At that time, Emancipation was necessary, at this time, Multiculturalism 100 is not. [MCN 1993] **Opening his argument with a reference to "the spirit of Martin L. King," one columnist went on to disparage a contemporary gay rights march on Washington. Finding humor in the anti-Jim Crow sit-ins of the 1960s, a cartoon portrayed a "sandwich" entering a restaurant and being told, "We don't serve food here"** (MCN 1993).When speech or published words and images that cause "gro harm" go uncontested, they achieve their aims through defamation stigmatizing practice. **By assaulting people of color, these "words that wound" attempt to reproduce the former system of domination-sub dination that Brown v. The Board of Education and the Civil Rights were designed to address** (Lawrence 1993:75). Constructing a stigm tized "other" through the representational practices described abov undermines the targeted person's potential for self-representation- democracy must be founded on the opportunity to represent.

### Hopkins

#### Student journals publish damaging information that young children shouldn’t see [turn or possible PIC]

**Hopkins:** Hopkins, Michael [J.D. Candidate, May 2008, The John Marshall Law School.] “COMMENT: HEMLOCK IN THE MARKETPLACE: HOW FREEDOM OF THE PRESS FOR COLLEGE NEWSPAPERS POISONS THE FIRST AMENDMENT.” *The John Marshall Law Review.* Summer 2007. RP

In **the analysis of freedom of the press issues between college and high school students, age distinctions flow in and out of arguments** - conflations lose sight of differences, and efforts to separate lose sight of similarities. This confusion undermines analysis from the outset. However, one constant remains: **Opposition to Hazelwood's application to colleges relies in no small part on the differences in ages and intended audiences**. Proponents of a free college press decry any hint of restraint on college journalists because of their maturity. **In- deed, arguments for college press restraints that assume any chronological immaturity of student readers or journalists must fail; it is not at all unusual for college students to be in their late twenties or thirties**. Thus, if some rule that accepts the notion of restraint of a college press is to be fashioned, it must find its source in something other than a student journalist's having had a limited amount of time to loiter on the planet. **At Governors State University, the center of the Hosty storm, the average student age is thirty-four. Presumably, this maturity should leave students receptive to and, ultimately, sharper for their exposure to newspaper covers depict- ing Jesus with an erection, or statements that college professors operate telephone sex lines**. But the maturity sen- timent is built on a false predicate. **Given the average age of a Governors State University student, it is reasonable to assume the "average" university student at GSU is likely the parent of a child, or children, ages newborn to sixteen. Where protestations are predicated on forging new minds within the university community, lost in the calculus is that community means just that: community. At a school where the average student age is thirty-four, there are bound to be children in tow. Where children follow, children see; where older children follow, older children read. And so the cases have come full circle, with a potential reading audience back to the ages tendered in Hazelwood. Current First Amendment protections for college journalists apparently leave no barrier between the five-year-old in tow and an image of Jesus on the cross with an erection. Libel aside, this seems a freedom of dubious value to the college student or journalis**t. Notwithstanding maturity issues, there is a strong similarity between high school and college journalists: Neither has the education or experience to be a journalist. News organizations hire reporters who have, minimally, a bachelor's degree. Advancement may even require a graduate degree. Even that may not be enough for the fledgling reporter to find voice at a major news outlet. Larger news organizations enjoy the luxury of demanding several years of experience. In preparing for a career as a journalist, then, high school students and college students are less part of separate and distinct categories of journalists than they are individuals engaged in a continuum of preparation. That one may be older and more mature in one stage of the process than in another does not suddenly imbue the student with a completed education or experience. College is where future professionals learn their craft; it is not a forum for accomplished professionals to ply their trade. **Given the harm irresponsible and unethical journalism can inflict, there seems little difference between allowing a first year medical student to perform unassisted surgery and allowing a student journalist all of the powers of the First Amendment.**

#### School newspapers are used as a medium for defamation and personal vendettas [Another potential PIC]

**Hopkins:** Hopkins, Michael [J.D. Candidate, May 2008, The John Marshall Law School.] “COMMENT: HEMLOCK IN THE MARKETPLACE: HOW FREEDOM OF THE PRESS FOR COLLEGE NEWSPAPERS POISONS THE FIRST AMENDMENT.” *The John Marshall Law Review.* Summer 2007. RP

In Tinker, Justice Black was clearly bothered by the origin of the protected speech. Without addressing it directly, he noted non-plaintiff siblings of the Tinker plaintiffs, aged eight and eleven respectively, also defied the school rule against black armbands. He followed this observation by making note of the religious and political affiliations of the plaintiffs' parents. The subtext is clear: It wasn't the students' speech the court was protecting. The student papers in Hosty give rise to the same question Justice Black seemed concerned with: Whose speech is it, anyway? **At the heart of the Hosty case are publications prominently featuring The Innovator's one-time advisor, Geoffrey de Laforcade, and his disputes with the University over his termination**. It was a termination the student edi- tors were unwilling to acknowledge. Hosty's writing for the paper gave one-sided voice to de Laforcade's claims against the University and administrators who refused to renew his contract. **One article, which spanned several pages, included accusations of document alteration, racist comments, and mail tampering.** In the same issue, a letter to the editor penned by de Laforcade laid blame squarely at the feet of the college dean for a former colleague's suffering through kidney failure, as well as the colleague's inability to pay his aging mother's bills. **In a previous edition, Hosty stated that the dean's college was engaged in "confirmed unprofessional behavior ... which may prove to be illegal."** The article threatened student senate investigation of racial and religious discrimination and addressed de Laforcade's dismissal. Hosty further implied contract and due process violations on the part of the dean. Dr. Jacqueline Kil- patrick, who stated that de Laforcade was "unhappy" with her, likewise became a target of the paper. **Of course, this may mean nothing more than fealty to a respected former advisor, articulated through poorly-written and ethically unsound attacks. On the other hand, it stands for the proposition that the unrestricted First Amendment protection to student journalists and college newspapers in public universities provides a medium and a vehicle for attacks that have nothing to do with the marketplace of ideas, but rather with the personal agenda of anyone who has favorable access to an untouchable student journalist.**

#### First Amendment rights for journalists are bad for civic engagement – they give journalists a bubble they wouldn’t have in the real world that protects them from liability

**Hopkins:** Hopkins, Michael [J.D. Candidate, May 2008, The John Marshall Law School.] “COMMENT: HEMLOCK IN THE MARKETPLACE: HOW FREEDOM OF THE PRESS FOR COLLEGE NEWSPAPERS POISONS THE FIRST AMENDMENT.” *The John Marshall Law Review.* Summer 2007. RP

**First Amendment protection for college newspapers is a myopic aberration**. Courts should adopt a deferential standard of reasonableness in student newspaper cases, without any of the forum analysis suggested by Hazelwood and Hosty. **Further, state-run institutions must be put in the position of publisher in order to remove the student journalists' license to libel. The fundamental flaw in the current conception of First Amendment rights for college journalists is an anomalous creation of protections that do not exist outside of this artificial bubble. The anomaly results in a virtual license to libel by those least trained in, and least restrained by, professional ethics. Students are likely judgment proof, and institutions simply have no liability for harms inflicted with their tacit support. Further, this bubble exists in an insular academic community that has broader social implications than the courts have imagined in their cauldron of speech conception**. Students' children and other children brought to campus for various activities are likewise a part of the campus community; thus, the vision of a college campus as a unique environment filled with wide-eyed and adult minds reaching for knowledge and emerging from a crucible of ideas, forged wiser for a better world, is untenable. **It is a naive and myth-laden conception.** Instead, this vision is, by design, more suited to the abuse of others within the community and the susceptibility to abuse by any who can gain access to the medium.

#### Limitations are most consistent with how the real world operates [FW NC link?].

**Hopkins:** Hopkins, Michael [J.D. Candidate, May 2008, The John Marshall Law School.] “COMMENT: HEMLOCK IN THE MARKETPLACE: HOW FREEDOM OF THE PRESS FOR COLLEGE NEWSPAPERS POISONS THE FIRST AMENDMENT.” *The John Marshall Law Review.* Summer 2007. RP

This reasonableness would protect college officials from over-zealous First Amendment litigation against them, in their personal capacities, in federal courts. Conversely, however, it would allow a remedy against the same officials, in their personal and official capacities, in state courts n168 for individuals libeled by student newspapers. As publishers, university administrators would be held accountable for publication and resulting injuries, thereby defeating the liability-free zone currently in existence. **First Amendment protection for student journalists in state universities is detrimental to learning objectives and offers a unique medium for harm. Instead of adopting the Hazelwood forum analysis in college newspaper censorship cases, a deferential reasonableness standard should be applied in issues of prior restraint. This would allow journalistic freedom comparable to that which exists in the real world, in which real journalists operate, with the institution in the position of publisher and responsible for preventing libelous or unethical content, as well as content that is at odds with the institutional environment or interests**. This reasonableness would protect college officials from over-zealous First Amendment litigation against them, in their personal capacities, in federal courts. Conversely, however, it would allow a remedy against the same officials, in their personal and official capacities, in state courts for individuals libeled by student newspapers. As publishers, university administrators would be held accountable for publication and resulting injuries, thereby defeating the liability-free zone currently in existence. This approach also acknowledges a reality that First Amendment zealotry ignores: **Without a publisher to whom student journalists or editors are answerable, the journalistic experience of working on newspapers in state colleges is not rooted in reality, and, therefore, there is no justification to extend abso- lute First Amendment protections to our most inexperienced journalists.**

### Cammaerts

#### Hate speech on the internet results in the closing off of people’s minds to other perspectives, entrenching hegemonic views – this individualism makes dialogue counter-productive.

**Cammaerts:** Cammaerts, Bart [Department of Media and Communications, The London School of Economics and Political Science] “Radical pluralism and free speech in online public spaces: the case of North Belgian extreme right discourses.” LSE Research Online. 2009. RP

**In addition to pointing to issues of access and addressing the crucial question as to who participates in online public debates, many scholars challenge or at least question the potential of the internet to facilitate and enable (rational) deliberation within an ideal speech situation. A recurrent observation is that much debate on the internet tends to take place between like-minded (male) participants situated in homogenic ideological frameworks and engaging in, what Davies (1999: 162) calls *‘opinion reinforcement****’* and Wilhelm (2000: 89) *‘homophily’*. On the contrary, ideologically heterogeneous unmoderated spaces for debate, while being more open, are often confronted with flame- wars between (often anonymous) participants (Eum, 2005; Cammaerts, 2005: 70). **Finally, some authors also address the dangers of individualisation, alienation, isolation and fragmentation, which – according to them - are increased by ICTs** (Postman, 1992; Gitlin, 1998). **New media facilitate the catering to specific niche-markets, characterised by a pull-strategy, which promotes the segmentation of publics, *‘disadvantag[ing] deliberation and the pursuit of common ground and undermin[ing] the politics of democratic participation’***(Barber, 2003: 45). **While many proponents of digital culture and technological advancement seem to argue that the internet has all the requirements to be a Habermassian public sphere, others – such as many authors cited above, argue the contrary or are more cautious in their assessment.** This leads us to argue that the real question here is maybe not whether the internet constitutes a public sphere, but should relate to the inaptness of the normative Habermassian public sphere notion at a theoretical level to account for current political and social processes in highly mediatised and popular culture driven societies.

#### Free speech has become a hegemonic ideology that prevents agonistic democracy.

**Cammaerts:** Cammaerts, Bart [Department of Media and Communications, The London School of Economics and Political Science] “Radical pluralism and free speech in online public spaces: the case of North Belgian extreme right discourses.” LSE Research Online. 2009. RP

**It could be argued that while freedom of speech is considered one of the cornerstones of a democracy, it is at the same time also one of the most contested rights**. The recent Danish cartoons controversy depicting the prophet Muhammad, deemed to be blasphemous by Sunni Muslims, is a case in point (Sturges, 2006; Post, 2007). From a liberal and rather procedural perspective on democracy, freedom of speech and the press needs to be almost absolute, preventing state interference in determining which speech is acceptable and which not (Dworkin, 1994). **However, in democratic societies embedded in the social responsibility tradition, freedom of speech is more carefully weighed against other rights and protections and considered relative rather then absolute** (Lichtenberg, 1990). The US First Amendment of the Constitution epitomises the absolutist perspective. It states that ‘Congress shall make no law ... abridging the freedom of speech, or of the press’. Embedded in a tradition of individualism and libertarianism, and a firm belief in the need for citizens to be protected from the state, the freedom to be able to say what on wants, when and how, is sacred. **However, by protecting the content of all speech in such an absolute way, ‘the action that the speech performs’ (Butler, 1997: 72) is not taken into consideration.** As such, fairly rigid dichotomy is being constructed between the marketplace of ideas and social action. **Furthermore, the First Amendment discourse has become truly hegemonic – a dogmatic ideology in itself, which leads Schauer (1995: 13) to argue that there is ‘little free thought about free thought, little free inquiry about free inquiry and little free speech about free speech’. Although freedom of speech is undeniably a highly valued right of any democracy, it does not take priority over all other rights and liberties at all times, not even in the US.** Anti-defamation legislation, laws against obscenity, consumer and even copyright protection illustrate this clearly. Furthermore, in the 1950s and beyond the freedom of speech for US socialists and communists was seriously curtailed (Rosenfeld, 2001: 12). Concerning the relationship between freedom of speech and hate speech the issues are, however, much more complicated. While incitement to violence is outlawed, hate speech is protected by the First Amendment doctrine. In this regard, Matsuda (1993: 31-32) points out that ‘people are free to think and say what they want, even the unthinkable. They can advocate the end of democracy’, and furthermore ‘expressions of the ideas of racial inferiority or racial hatred are protected’. The claim by Schauer that there is very little free speech about the freedom of speech and Matsuda’s argument that even the end of democracy can be called for, are not entirely convincing, even within the liberal paradigm and the procedural view of democracy. Popper’s ‘paradox of tolerance’ is a good example of this. According to Popper (1965: 265) an open and tolerant society cannot survive if tolerance is unlimited: ‘**Unlimited tolerance must lead to the disappearance of tolerance. If we extend unlimited tolerance even to those who are intolerant, if we are not prepared to defend a tolerant society against the onslaught of the intolerant, then the tolerant will be destroyed, and tolerance with them.**’

#### Agonism demands the limiting of speech that shuts off further engagement – hate speech should be limited.

**Cammaerts:** Cammaerts, Bart [Department of Media and Communications, The London School of Economics and Political Science] “Radical pluralism and free speech in online public spaces: the case of North Belgian extreme right discourses.” LSE Research Online. 2009. RP

**The harm-principle, initially introduced by Mill, himself a strong advocate of free speech and liberalism also attests to the existence of debate within the liberal free speech tradition. The harm-principle stipulates the conditions under which among others free speech could be curtailed: *‘the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others’*.** (Mill, 1978: 9). However, given his liberal background, ‘doing harm to others’ has to be seen here in an individualistic sense and does not extend to collective harm. Much of hate speech would be allowed, as it is argued that it does not provoke direct harm to another individual. Opposed to an individualised and formalised conception of democracy and free speech - detached from action and conceiving ‘the commons’ as a marketplace of ideas, is the notion of democracy as a process, as ‘a promise ... the endless process of improvement and perfectability ...’ (Derrida, 1997: 5). **Democracy is thus not merely a method for decision-making and electing ruling elites (Schumpeter, 1973), but embedded in everyday life and practices and concerned with values such as equality, protection against the market, freedom of speech and social responsibility, leading to a social contract between the citizen and the state** (Rousseau, 1977). **This more positive emancipatory perception of the state has led to a more balanced and relativistic approach to freedom of speech. As such, in many countries a collective – rather then an individualistic – harm-principle prevails over the freedom of speech principle allowing for direct (legal) intervention when it concerns racism and discrimination. In addition to this, Feinberg’s (1985) offence-principle is also often invoked by advocates of limits to free speech. Even within the tradition of radical democracy where a radical pluralism of idea’s and voices is deemed beneficial for democracy, a hegemony of basic democratic values is considered crucial**. Echoing Popper, but clearly from another political paradigm, Mouffe (2005: 120) argues that ‘*[a] democracy cannot treat those who put its basic institutions into question as legitimate adversaries.’.* **As a result of this and contrary to the US, many European countries as well as countries such as Canada, Brazil, Australia and New Zealand have adopted quite stringent legislation to counter hate-speech and the incitement of racial and ethnic hatred. Some countries also voted legislation outlawing holocaust denial or revisionist discourses. In Germany parties with a fascist ideology can be forbidden.**

#### Hate on the Internet destroys the possibility of democratic debate.

**Cammaerts:** Cammaerts, Bart [Department of Media and Communications, The London School of Economics and Political Science] “Radical pluralism and free speech in online public spaces: the case of North Belgian extreme right discourses.” LSE Research Online. 2009. RP

**As has been shown by recent research into progressive movements, the internet allows dispersed activists to link-up and interact, superseding boundaries such as space and time, creating subaltern spaces of communication** (della Porta and Tarrow, 2004; Kahn and Kellner, 2004; Cammaerts, 2005). Likewise, for (post-)fascist, fundamentalist, and other ‘repressive’ movements the same applies. **Radical, marginalised and atomised groups of people, often politically isolated, are able to link up through the internet in small communities of like-minded, such as could be witnessed in the Stormfront forum**. Especially the comments of Farkasfarsang, calling the forum ‘his second home’, were pertinent in this regard. **However, in a context where a powerful extreme right actively propagates such racist ideologies, both implicitly and explicitly, this becomes another issue altogether. And it is here that the limits of a radical plurality of voices within a democracy expose themselves. It is therefore to some extent understandable that some Belgian politicians from left to right, from federalists to nationalists are calling for more pro-active government intervention regarding online hate speech, preferably at a European level of governance. Of course, given the deeply offensive and repulsive nature of many of the comments being made online and the context in which they were produced, it is difficult to remain neutral here; rational detachment is not an option. Such vitriolic discourses should make any democratic person angry, demanding that something be done about this**. The question remains what that something then is. Whilst laws and regulation or even technical solutions might be able to remove some of these discourses from the public space, therefore the ideas and ideology behind these discourses have not disappeared from the political.

### Desimone

#### BDS movements use tools of capitalism to gain power – they place moral value in money as a tool for political ends

**Desimone:** Desimone, Arturo [Contributor, Open Democracy] “Critique of the boycott divestment sanctions movement, from a Jewish supporter of the Palestinian cause.” Open Democracy. September 2014. RP

**The Boycott Divestment Sanctions movement has gained popularity worldwide as the most easily accessible response for European outrage at the sight of Israel's bellicosity, this latest time reported without the media filters that were more formidable in earlier decades of the occupation**. It is important to see the evolution of the 40-year long occupation and its foreign support through the prism of fetishistic behavior around products, brands and consumerism. Some of the more progressive American Jewish elites are today acting as if they never were fervent supporters of the lobbying enterprises, AIPAC and Jstreet, with utter disregard for both the Arabs and the evidence presented for decades by the “self haters'' of the Jewish left. **Today they are distancing themselves from what the Boycott Divestment Sanctions movement has in its at times neoliberal terminology called ''brand Israel,'' a brand needing to be dropped without any further involvement or responsibility by those who through their incessant lobbying aided Israel in its steadily rightward militarization**. A large part of the American liberal-left intellectual establishment's former support for Israeli warfare has turned, perhaps quite fortunately for the world, to condemnation, and even the New York Times no longer functions as Eli Wiesel's anti-depressant of choice. The pro-Palestine activist Norman Finkelstein for years predicted ''the breakup of American Zionism'' and most recently made a fitting analogy in an essay published in Guernica where he confronts some of Israel's former defenders among the American left. **Before moving on to the critique of Ari Shavit's latest defense of Israel, the scholar describes the momentum of BDS popularity, in its new logic: product Israel was sold to them like the tobacco industry and Philip Morris' cigarettes, but today the Zionist product is exposed as a health hazard. This consumption-morality way of thinking about this issue began with the BDS movement, particularly among the European, mostly non-Jewish former supporters of Israe**l. These were converts from philo-zionism, who had joined the BDS movement claiming that they had been deceived when they flocked to the kibbutzim during the 1960s and 1970s, braving in bunkers the Yom Kippur war's momentary turbulence and helping with volunteer-work to build what they considered a progressive beacon. This way of thinking suggests that Israel's former supporters are really victims and not major players in the conflict, whether the support came from guilt-motivated European non-Jews or from American Jewish elites hungering for an identity politics that was also conveniently aligned with American foreign policy interests. **Victim identity politics are in demand in contemporary western culture.** Unfortunately the support for Palestinian solidarity has had to pass through the prism of victim identity politics—despite the irony of Palestinians being the victims of a state that has justified 40 years of brutal and humiliating occupation by politicizing a sentimentalized victimhood and a tyrannical misuse of the holocaust memory. On the other side of the new cold war lines, the Russia Today state-broadcast company recently announced skyrocketing sales of new ''Boycott-apps'' for phones. Purchases soared in St Petersburg and Moscow. There is irony in this Russian popular condemnation of a state of Israel armed and supported by its official cold war enemy, the United States. Israel has committed atrocities similar to those of Russia in recent Chechen wars, using ''war on terror'' rhetoric. The normalization of discrimination against Muslims in Russia can only be surpassed by the traditional normalcy of anti-Semitism, in a city where Jews were once typically forbidden from having living quarters. **A potential danger lurks in a mirror image: the moral degeneration of Israel having its shadow in the moral degeneration of pro-Palestinian solidarity efforts which increasingly embrace a consumerist logic, as courage becomes less of a requirement in order to publicly condemn Israel, and the liberal elite's ideological fashions switch from ‘the Israeli product’ to that of ‘cultural boycott’.** The more courageous path is that of pushing for the big resounding ‘S’ in B-D- S: state sanctions. These have been declared by the majority of South American states, including perhaps most importantly, Argentina. Argentina has the third largest Jewish community in the world. And indeed, pressure upon the state is vital, both for a US arms embargo, and for the labelling of all products proceeding from settlement enterprise as the equivalent of blood diamonds.

#### BDS movements are used to sanction innocent Israelis who aren’t even part of the government and have no role to play.

**Desimone:** Desimone, Arturo [Contributor, Open Democracy] “Critique of the boycott divestment sanctions movement, from a Jewish supporter of the Palestinian cause.” Open Democracy. September 2014. RP

**But people should think – a successful “cultural boycott'' can have quite an adverse effect on Israelis who fit in least in a militarist Israeli society. Ballet dancers, for example, or orchestral musicians and theater groups who are not part of military culture: they should have their chance to perform and tour in the west. To risk sounding naive, they are ideally the servants of art and not of the Israeli Ministry of Foreign Affairs, as BDS lecture-circuit stars have claimed with such quick dismissal. Though the comparison to Furtwangler might be apt in the dark hours of Israeli jingoism and bloodbaths in Gaza, it must be remembered that there are many young Israeli artists, dancers and musicians who have every intention of beginning a new artistic career outside Israel**. Maybe they do not yet have the freedom won by renown and recognition to begin anew in a foreign country - unlike the great Argentinian-Israeli conductor and pianist Daniel Barenboim, now in his 60s, who recently announced his move to Argentina in response to the horrors of the most recent attack on Gaza. His return to Argentina, and his timing in leaving Israel, are both to be celebrated. But a younger artist in Israel might not be in the same fortuitous position, especially as the opportunities for all artists and not only Israeli ones have become more restricted, internationally, due to academic gatekeepers and the right wing crackdown on the arts which is taking place globally. **Blaming artists for the crimes of ''brand Israel'' is far too well in accordance with the momentum of global right wing sentiment: from Europe to Russia, from Turkey to Israel and the newly arisen Islamist governments, the arts are altogether treated as not being useful to society.** For the German painter Max Beckmann, exile, the decision to leave Germany meant that he could go to Amsterdam, where he lived for years across the Rhine river. For the Israeli who decides to exit his society, the choice is more limited, unless he is of affluent means or has possibilities in Europe. The only step readily available is that which some courageous members of the left and Hadash communist party have made, moving to Ramallah or to Gaza to be activists and witnesses supporting the Palestinian cause. The truncated career of a young dancer or actor cannot possibly compare to the destruction of all of Gaza and the casualties of murdered children**. But the strategy by activists is too similar to the ways of vigilante jingoists, to blame the arts for the crimes of regimes and elitist parties under whose governance the artists have performed.** Jingoism blames artists for not having taken direct action in response to the suffering of a people, for being ''elitist'', expendable in a time of manufactured economic crises, and therefore justifying a pragmatist right wing party that eliminates them, to the detriment of all. I make this unusual connection after having witnessed a salafi riot that attacked the “Printemps des Arts'' exhibition in Tunisia in 2012, rallied by the right wing of both the Islamist and the ousted RCD party, when I lived in Tunisia for a mere, too brief 8 months —too brief but long enough to learn of the genesis of right wing democratic victories because of successful propaganda in the face of an arrogant liberal elite.

#### BDS movements misidentify the causes of oppression – boycotting supermarkets relies on libertarian ideas that reproduce cap.

**Desimone:** Desimone, Arturo [Contributor, Open Democracy] “Critique of the boycott divestment sanctions movement, from a Jewish supporter of the Palestinian cause.” Open Democracy. September 2014. RP

**The boycott needs to address the state and use the state, or it is colluding with the neoliberal belief in the ''minarchism'' or neoliberal minimal and impotent state that Ayn Rand stood for, and whose arguments Milton Friedman echoed in his watered down extractions, his fake statistics and fake models**. Use the state. This is the position of a leftist, not a right wing anarchist: let us use the state, while we have it as a weapon. **But a boycott that plays out in western supermarkets, relies instead on post- politics and on the consumers’ frigid aggression for its activism. Choosing the path of consumer boycott reinforces neoliberal ideology because it agrees with the neoliberal implicit logic that pressuring the state is meaningless, and that the state is to be considered a minor and harmless entity, next to the corporation that produces, imports or exports the wrong product.** If European markets need to label any products from the settlement's factories as African blood diamonds, the moral dimension in any trade with the settlements is arguably of a similar gravity. European states need to be pressured to enact this regulation. **But boycotting any piece of fruit or biscuit that might originate in a part of Israel other than the settlements, is misleading. It implies that a fruit from Indonesia was not also harvested on land seized after a recent genocide, for example.** It leads the public to miss the point of why action towards Israel need be prioritized: a forty year long military occupation that is still ongoing, a prison made possible by tactical, military and economic support from the United States and to a significant but lesser extent from European support and aid. A boycott in the supermarkets and shopping malls reinforces the neoliberal corrosive belief system that a citizen votes by his purchases, his pocketbook and buying behaviour, instead of by doing politics or by putting any pressure on the government. The moral degeneration of Israel must not have as its shadow and indirect consequence the moral degeneration of the Palestinian solidarity movements, for in a desperate struggle there is such a danger as all sides losing at once. Acknowledging supermarkets as theaters for the shifting of foreign policy amounts to further endorsement of the liberal fetishism of choice. Such choice was once elevated as liberalism's individual freedom but today appears as no more than a glorified, fetishized menu of options, as consumption becomes the sole standard of citizenship and inclusion.

### Delgado and Ross

#### Their uniqueness trends in the opposite direction – student protests against capitalism are increasing.

**Delgado and Ross:** Sandra Delgado and E. Wayne Ross [Delgado is a doctoral student in Curriculum Studies at the University of British Columbia and Ross is a Professor in the Faculty of Education at the University of British Columbia] “Students in Revolt: The Pedagogical Potential of Student Collective Action in the Age of the Corporate University.” 2016. RP

**The last decade has been marked by a significant increase in the number of student protests worldwide. A diverse range of reasons has contributed to the upsurge of student activism, but generally, most of the movements have risen up as response to the aggressive attacks that education is suffering globally at the hands of capitalist interests** (Zhou & Green, 2015). **The effects of neoliberal capitalism on universities have been widely discussed and studied** (e.g., Aronowitz, 2001; De Sousa Santos, 2010; Giroux, 2003, 2010; Hill, 2013; Molesworth, Scullion, & Nixon, 2011; Petrina & Ross, 2014; Ross & Gibson, 2007; Simons & Masschelein, 2009). Scholars like Aronowitz (2001), Fernández (2014) and others, have argued that the rise of the “corporate university” is one of the central elements that has drastically transformed the global landscape of higher education.

### Herrold

#### Zone restrictions on anti-abortion protesters compete – courts have ruled that campus abortion protests are constitutionally protected.

**Herrold:** Herrold, Joseph D. [B.A., Grinnell College, 2003; J.D. Candidate, Drake University Law School, 2006.] “CAPTURING THE DIALOGUE: FREE SPEECH ZONES AND THE ‘CAGING’ OF FIRST AMENDMENT RIGHTS.” *Drake Law Review.* July 2006. RP

For example, the University of Houston required a student organization to request permission to engage in First Amendment activities and then restricted the expressive activities it deemed “potentially disruptive” to a set of designated free speech areas.41 Student activities that were not deemed potentially disruptive were not confined to the free speech zones or time and manner restrictions imposed on the potentially disruptive activities.42 **The plaintiffs sought to exhibit anti-abortion materials on a campus plaza but were denied after the dean determined their display to be potentially disruptive.43 Using forum analysis, the court determined that the entirety of the desired plaza was a designated public forum, and the denial of campus use to particular student groups amounted to a prior restraint on speech.44 The court stated that “the Dean’s unfettered discretion to grant or deny permits” under the university’s policy made it “inherently inconsistent with a valid time, place, and manner regulation because such discretion has the potential for becoming a means of suppressing a particular point of view**.”45 The court correctly noted the danger for viewpoint-based discrimination inherent in the dean’s power to assign students he deemed disruptive to protest zones and invalidated the university policy and the officials’ actions.46 **This decision in Pro-Life Cougars v. University of Houston47 was based largely upon a previous Fifth Circuit ruling in which the court invalidated Southwest Texas State University’s efforts to prevent a group from handing out newspapers that contained advertisements at the campus “free expression area**.”48 Unlike the Eleventh Circuit in Alabama Student Party v. Student Government As s’n of the University of Alabama49 discussed later, the Fifth Circuit found the grounds of Southwest Texas State University—specifically, the sidewalks and plazas—to be designated public fora for the expressive activities of university students.50 The court compared students’ roles on campus to the voting electorate in a town, noting, “the ‘campus of a public university, at least for its students, possesses many characteristics of a public forum.’”51

### Benderly

#### Public colleges and universities ought not restrict any constitutionally protected speech, except restricting research done in laboratories operating under unsafe conditions.

Or

Ought not restrict any constitutionally protected speech except for research done on lithium in campus laboratories

**Benderly:** Benderly, Beryl Lieff [Contributor, Slate] “Explosions in the Lab.” *Slate.* May 2009. RP

**A few days after Christmas of 2008, a young technician in a biochemistry laboratory at the University of California-Los Angeles began to transfer a tablespoon of t-butyl lithium from one container to another. T-butyl lithium is pyrophoric, meaning it ignites on contact with air, but Sheri Sangji wasn't wearing a protective lab coat— instead, she had on a flammable synthetic sweatshirt. Somehow the stuff spilled onto her clothing, and she was engulfed in flames. Sangji died from her burns 18 days later, and UCLA officials bemoaned the "tragic accident" that killed her.** According to a recently completed government investigation, the fire could have been foreseen. On May 4, the California Division of Occupational Safety and Health cited the university for multiple "serious"—i.e., potentially life-threatening— violations, including its inability to show that Sangji had been trained to handle the dangerous substance and the lack of proper protective attire. **UCLA's own safety officials had already faulted the lab on the latter issue back in October, but the problem went uncorrected. All told, Cal/OSHA imposed $31,875 in fines, which the university did not contest. The death of a healthy young woman from a chemical spill at a UCLA lab is deeply shocking. But the presence of flagrant safety violations at a major research university is no surprise. After reading about the Sangji incident and others like it, a columnist for the peer-reviewed journal Chemical Health and Safety wrote that he'd come to the "disheartening conclusion that most academic laboratories are unsafe venues for work or study." Though no one keeps comprehensive national statistics on laboratory safety incidents, James Kaufman, president of the Laboratory Safety Institute in Natick, Mass., estimates that accidents and injuries occur hundreds of times more frequently in academic labs than in industrial ones**. A depressing litany of news items backs up these observations: In 2005, a biology professor at Cleveland State University was electrocuted when he plugged in a light using an ungrounded plug. **That same year, an explosion in a Stanford University lab critically injured a postdoctoral researcher. In 2006, Tufts University was fined by the federal OSHA after two lab technicians were exposed to potentially lethal botulinum toxin when one opened a centrifuge prematurely. Also in 2006, a nitrogen cylinder that had been tampered with exploded, causing extensive damage to a Texas A&M building (PDF).** In 2008, an explosion in a University of Rochester laser lab left one employee seriously injured.

#### It competes – this is considered academic freedom and is currently allowed and isn’t illegal.

**Benderly:** Benderly, Beryl Lieff [Contributor, Slate] “Explosions in the Lab.” *Slate.* May 2009. RP

**Why the difference between industry and academe? For one thing, the occupational safety and health laws that protect workers in hazardous jobs** apply only to employees, not to undergraduates, **graduate students, or research fellows who receive stipends from outside funders.** (As a technician, Sheri Sangji was getting wages and a W-2. If she'd been paying tuition instead, Cal/OSHA could not even have investigated her death.) Commercial firms, which have only employees, make workplace safety a top priority. In industry, a major incident can result in significant career damage and sometimes dismissal. **The major scientific companies that do research comparable to that in university labs go so far as to make safety a line item on a lab chief's annual performance evaluation, so any significant safety violation becomes a permanent black mark. The safety of labs and their personnel thus becomes the personal responsibility of the lab chiefs and their superiors. Academe doesn't work that way. The major federal funding agencies, which set the priorities for research on campuses across the country, don't even ask about a scientist's safety record before awarding funds, and neither do tenure and promotion committees. At most colleges and universities, the responsibility for lab safety falls to an office of health and safety that has little power over professors who are bringing in millions of dollars in grants.** Even serious mishaps rarely damage lab chiefs' careers. Academic culture tends to disdain the painstaking documentation of training and procedures in industrial labs, treating them as bureaucratic Mickey Mouse beneath the dignity of free-spirited investigators. Since what counts in academe is publishing papers and winning grants, any change will have to start with the people who control the research money. Federal funding agencies like the National Institutes of Health and the National Science Foundation should treat the welfare of the students, postdocs, and technicians who do the labor of American science with the same attention they afford experimental subjects and laboratory animals. As it stands, applicants are routinely asked to document the steps they will take to safeguard the people and vertebrate animals they'll be studying, but they needn't provide any information on how they'll protect the experimenters themselves. If the point of medical research is to save lives, then the NIH and NSF should insist—on pain of dismissal, like the chemical companies—that researchers follow all accepted safety procedures. If Sheri Sangji's death is to mean anything, it must be that no lab chief—and certainly no federal agency—claiming to further human welfare ever again tolerates the risk of harm to lab workers. That means that university administrators from the provost on down must make safety a serious concern and a requirement for career advancement and hiring, and tenure and promotion committees must hold faculty members responsible for seeing that everyone in their labs has the training, skills, and equipment needed to work safely. Funding agencies must make a good safety record and evidence of safety awareness real conditions for getting and keeping grants. **Never again should academic research needlessly claim the life of a researcher.**

### Levy

#### Campus movements against war cause failures overseas that doom US efforts – Vietnam proves. [Link card to heg]

**Levy:** Levy, Janet [Contibutor, Accuracy in Media] “Iraq’s only Similarity to Vietnam: Its Dangerous Anti-War Movement.” February 2007. RP

Contrary to media reports and the perception of a majority of Americans, the United States was winning the war in Vietnam following the successful watershed battle known as the Tet Offensive. **Sadly, the Vietnam War was not lost on the battlefield. The carnage and repressive regimes that followed the U.S. exit may have been avoided had the truth been known by the American public. The United States was defeated by a carefully conceived, multi-pronged propaganda campaign that set the stage for America’s eventual failure in the region. The ingredients for the U.S. defeat consisted of the funding and encouragement of the anti- war movement by Hanoi and Communist splinter groups, enlistment of “useful idiots” in Hollywood to publicize and popularize the movement, media complicity with negative portrayals of the war, anti-American proselytizing by professors and students on American university campuses, denigration and demonizing of the military and, ultimately, withdrawal of support and appropriations by the U.S. Congress.** **All these factors led to the perceptual reframing of the Vietnam War as an ignoble imperialistic atrocity, a far cry from its launch as a fight to extinguish communism in Southeast Asia. Today, many of these same elements have reappeared as the United States struggles to defeat Islamic terrorists in Iraq and Afghanistan and to apprehend a fifth column of jihadists at home. Inherited from the Vietnam experience, they are now evident within the new conflict. This time, the risks to our country’s future are even greater should they succeed.**

#### Activists are motivated not by concern but by hatred of America that manifests itself in violence within the country.

**Levy:** Levy, Janet [Contibutor, Accuracy in Media] “Iraq’s only Similarity to Vietnam: Its Dangerous Anti-War Movement.” February 2007. RP

**As was true during the Vietnam War, today’s anti-war groups hide their anti-Americanism behind the politics of peace. Recruiting others on a platform of “peace,” they ally themselves with radical Islamists, glorify the enemy’s goals and identify themselves as “freedom fighters,” battling an imperialistic world power. In the lead up to the war against Iraq, anti-war activists effectively mobilized some of the largest protests and demonstrations since the Vietnam War. They attacked the war effort abroad and security measures at home, sympathized with Saddam Hussein as a victim of American war-mongering and even served as strategically-placed human shields**. Although Operation Iraqi Freedom was welcomed by the vast majority of Iraqis and succeeded in liberating 25 million people from the ravages of a murderous despot, anti-war protestors decried the U.S. “occupation” of Iraq and the alleged subjugation of the Iraqi people. Their steadfast position was that any use of American military power was an attempt to establish American hegemony in the region and exploit Iraq’s oil resources. The discovery of Saddam’s mass graves and torture chambers were ignored by the anti-war movement in the service of demonizing the actions of the evil, American empire.

#### The Aff’s stance towards anti-war activism makes students unsafe on campuses – those who don’t agree are stigmatized and marginalized – this causes hate speech.

**Levy:** Levy, Janet [Contibutor, Accuracy in Media] “Iraq’s only Similarity to Vietnam: Its Dangerous Anti-War Movement.” February 2007. RP

**Equally reminiscent of the ’60s and ’70s, university and high school campuses are hotbeds for anti-American and anti-war sentiments**. Prior to the inception of Operation Iraqi Freedom, the “Books Not Bombs” strike was coordinated on campuses nationwide by the National Youth and Student Peace Coalition, whose members include the Young Communist League, USA, and the Muslim Students’ Association of the U.S. and Canada. **This anti-war protest was endorsed by professors in a wide variety of disciplines, from economics to biology, who cancelled classes or assured anti-war students they would not be penalized for absences. Some professors even focused the day’s class material on the potential war. Thus, a majority of institutions of higher education appeared to expect conformity of anti-war opinion and, in some cases, actually imposed the strike on the student population**. This behavior continues today as literature and anthropology professors use classroom time to express their opinions against the war and pressure students to toe their ideological line. **Often, students who agree with the Bush administration’s policy in Iraq jeopardize their grades by coming forward. They are treated with disdain and even disrespect in the classroom. Returning Iraq war veterans have been insulted, harassed and called “baby killers” in university classrooms. She adds:** Finally, as was the case during the U.S. fight against communism in Southeast Asia, the mission of the military has been undermined by blatant hostility and blanket condemnations. **Venomous slurs have been directed toward the dedicated servicemen and women who toppled a brutal dictator, struggled against radical Islamists, and fought for a better life for the Iraqi people. Politicians have been extremely negative. For example, Illinois senator Barrack Obama referred to the “wasted” lives of our soldiers. Massachusetts Senator John Kerry insulted the intelligence of our armed forces by proclaiming that people end up in the military if they’re not smart or studious.** Anti-military groups have tried to stop military recruitment drives and job fair participation in high schools and on college campuses. Even though all recruits today are committed volunteers who believe in the U.S. mission, anti-war activists portray them as victims, mercenaries or butchers. Isolated military improprieties committed by a few soldiers, like the Haditha incident and the Abu Ghraib scandal, receive outsized attention and are portrayed as representative of all military conduct. The slightest hint of misconduct is used to characterize all recruits and to malign the entire military mission. Anti-militarism has even been expressed by sweeping, local government measures. The city of San Francisco has engaged in various actions to rid itself of any relationship whatsoever to the military. Residents recently passed a symbolic measure demanding the withdrawal of troops from Iraq and prohibiting recruitment at high schools and colleges. City residents tried to stop Navy sponsorship of a summer concert, successfully blocked the docking of the USS Iowa at the Port of San Francisco and are trying to eliminate Fleet Week and the Blue Angels air shows.

#### The plan probably solves nothing – most Americans support US intervention abroad

**Levy:** Levy, Janet [Contibutor, Accuracy in Media] “Iraq’s only Similarity to Vietnam: Its Dangerous Anti-War Movement.” February 2007. RP

In Congress, many Democrats and several Republicans are invoking the Vietnam “quagmire” descriptive to support demands to curtail the Iraq war and withdraw U.S. troops. The Democrat electorate has chosen to interpret recent election results as a sign that the public is opposed to the war, rather than opposed to the way the war is being fought. **According to a recent national survey by Public Opinion Strategies, a majority of Americans (57%) wants to win the war in Iraq and makes the connection between Iraq and the global jihad. Fifty-three percent feel the Democrats are acting precipitously in pushing for immediate withdrawal and a majority (56%) also** believes that Americans should stand behind the president in times of war**. Most telling, 74% of those surveyed disagreed with the statement, “I don’t care what happens in Iraq after the U.S. leaves. I just want the troops brought home.”**

#### Anti-war protests on campus undermine heg

**Levy:** Levy, Janet [Contibutor, Accuracy in Media] “Iraq’s only Similarity to Vietnam: Its Dangerous Anti-War Movement.” February 2007. RP

**Equally reminiscent of the ’60s and ’70s, university and high school campuses are hotbeds for anti-American and anti-war sentiments**. Prior to the inception of Operation Iraqi Freedom, the “Books Not Bombs” strike was coordinated on campuses nationwide by the National Youth and Student Peace Coalition, whose members include the Young Communist League, USA, and the Muslim Students’ Association of the U.S. and Canada. This anti-war protest was endorsed by professors in a wide variety of disciplines, from economics to biology, who cancelled classes or assured anti-war students they would not be penalized for absences. Some professors even focused the day’s class material on the potential war. Thus, a majority of institutions of higher education appeared to expect conformity of anti-war opinion and, in some cases, actually imposed the strike on the student population This behavior continues today as literature and anthropology professors use classroom time to express their opinions against the war and pressure students to toe their ideological line. Often, students who agree with the Bush administration’s policy in Iraq jeopardize their grades by coming forward. They are treated with disdain and even disrespect in the classroom. Returning Iraq war veterans have been insulted, harassed and called “baby killers” in university classrooms. Finally, as was the case during the U.S. fight against communism in Southeast Asia, the mission of the military has been undermined by blatant hostility and blanket condemnations. Venomous slurs have been directed toward the dedicated servicemen and women who toppled a brutal dictator, struggled against radical Islamists, and fought for a better life for the Iraqi people. Politicians have been extremely negative. For example, Illinois senator Barrack Obama referred to the “wasted” lives of our soldiers. Massachusetts Senator John Kerry insulted the intelligence of our armed forces by proclaiming that people end up in the military if they’re not smart or studious. Anti-military groups have tried to stop military recruitment drives and job fair participation in high schools and on college campuses. Even though all recruits today are committed volunteers who believe in the U.S. mission, anti-war activists portray them as victims, mercenaries or butchers. Isolated military improprieties committed by a few soldiers, like the Haditha incident and the Abu Ghraib scandal, receive outsized attention and are portrayed as representative of all military conduct. The slightest hint of misconduct is used to characterize all recruits and to malign the entire military mission. Anti-militarism has even been expressed by sweeping, local government measures. The city of San Francisco has engaged in various actions to rid itself of any relationship whatsoever to the military. Residents recently passed a symbolic measure demanding the withdrawal of troops from Iraq and prohibiting recruitment at high schools and colleges. City residents tried to stop Navy sponsorship of a summer concert, successfully blocked the docking of the USS Iowa at the Port of San Francisco and are trying to eliminate Fleet Week and the Blue Angels air shows. In Congress, many Democrats and several Republicans are invoking the Vietnam “quagmire” descriptive to support demands to curtail the Iraq war and withdraw U.S. troops. The Democrat electorate has chosen to interpret recent election results as a sign that the public is opposed to the war, rather than opposed to the way the war is being fought. According to a recent national survey by Public Opinion Strategies, a majority of Americans (57%) wants to win the war in Iraq and makes the connection between Iraq and the global jihad. Fifty-three percent feel the Democrats are acting precipitously in pushing for immediate withdrawal and a majority (56%) also believes that Americans should stand behind the president in times of war. Most telling, 74% of those surveyed disagreed with the statement, “I don’t care what happens in Iraq after the U.S. leaves. I just want the troops brought home.” Last week, on the same day that Iraqi Prime Minister al-Maliki told Bush that the new security plan and heightened troop presence in Baghdad were “a dazzling success,” the House passed a non-binding resolution rejecting Bush’s 21,500-troop surge in Iraq. In the Senate, the resolution was just four votes short of the sixty required for cloture, which would have limited debate on the resolution and ensured passage. As a consequence of this narrow defeat, Democrats have pledged to repeal a 2002 measure authorizing and defining the mission of U.S. troops in Iraq. With no consideration of how this plays with the enemy, the morale of U.S. troops and the U.S. ground troops’ ability to build alliances with Iraqis, Senate Majority Leader Harry Reid issued a statement that the invasion of Iraq was “the worst foreign policy mistake” in U.S. history. In further attempts to block the deployment of more troops, House Democrats hope to restrict parts of a $100 billion emergency military funding request by the President. Rep. John Murtha (D-PA) and other Democrats have joined forces with anti-war groups to limit the President’s powers as Commander-In-Chief. Murtha and company plan to attach stipulations to any military appropriations; embark on a multi-million dollar, anti-war advertising campaign; and target vulnerable Republicans. Murtha is also seeking legislation as part of what he calls his “slow bleed strategy.” It would prevent military units from being deployed unless they meet certain standards and receive a break of at least one year between deployments. **This damaging action by politicians and their failure to support the U.S. government “destroys morale, stymies success and emboldens the enemy,” says Rep. Sam Johnson (R-TX), a former Vietnam prisoner of war. “Words cannot fully describe the horrendous damage of the anti-American efforts against the war back home to the guys on the ground,” Johnson said. “We must stick by ‘the troops.’ We must support them all the way? To our troops we must remain?always faithful.” This inattention to the message being sent to our soldiers is part of the broader failure by Iraq war opponents to recognize the dire consequences of U.S. withdrawal. It completely escapes opponents of the war on all fronts ? anti-war activists, Hollywood, colleges and universities and politicians ? that the conflict is not regional and one from which we can walk away without harm. It is positively stunning that they fail to recognize that Iraq could fall to Islamic terrorists. If this happened, Iraq would be a fertile base for Al Qaeda and other terrorist groups and a haven from which emboldened terrorists could attack U.S. allies and interests and threaten the very existence of our nation.**

### Goodman

#### Current policies suppress whistleblowers in the military but protections would *expose military abuses across society* – solves the case.

**Goodman:** Goodman, Melvin A. [Ex CIA Analyst] “The Need for National Security Leaks.” *Consortium News.* June 2013. RP

**A major problem in the United States is not that there are too many whistleblowers but that there are too few. Where were the whistleblowers when the Central Intelligence Agency was operating secret prisons; conducting torture and abuse; and kidnapping individuals off the streets in Europe and the Middle East and turning them over to foreign intelligence agencies that conducted torture and abuse? Where were the whistleblowers when the National Security Agency violated the Fourth Amendment of the Constitution against “unreasonable searches and seizures” and conducted widespread warrantless eavesdropping? Where were the whistleblowers when the State Department permitted the use of a consulate to serve as a cover for an inadequately protected intelligence platform in Benghazi? Where were the whistleblowers when the Pentagon was building secret facilities in North Africa and the Arabian Peninsula in order to conduct military strikes in countries where the United States was not at war? President Barack Obama, a Harvard-trained lawyer and former professor of constitutional law, has made it particularly difficult for whistleblowers and has displayed a stunning disregard for the balance of power and the need for oversight of foreign policy decision-making**. He has pursued more leak investigations than all previous presidents combined since the passage of the Espionage Act in 1919. Several press disclosures have been referred to the Justice Department for investigation, and in May 2013 the department subpoenaed two months of records for 20 telephone lines used by Associated Post reporters and editors. This was the most aggressive federal seizure of media records since the Nixon administration. Attorney General Eric Holder even departed from First Amendment norms by approving an affidavit for a search warrant that named a Fox News reporter as a possible co-conspirator in violations of the Espionage Act, because the reporter might have received classified information while doing his job. President Obama has also inexplicably contributed to the need for whistleblowers by weakening the traditional institutions for oversight in the national security process, the Office of the Inspector General. Inspectors General are not popular institutions within the federal government, but they are essential for keeping the government honest by unearthing fraud, abuse and other illegal activities. The Obama administration from the outset focused on weakening the OIG at the CIA by taking more than a year and a half to replace an outstanding IG, John Helgerson, whose staff had exposed the improprieties linked to extraordinary renditions as well as torture and abuse. The most outrageous pursuit of a whistleblower was conducted against Thomas Drake, who determined that NSA eavesdroppers were squandering hundreds of millions of dollars on failed programs while ignoring privacy issues. Drake took his issues to the IG at NSA, the IG at the Pentagon, and to the congressional intelligence committees. (I am aware of individuals who have contacted congressional staffers with issues that required congressional scrutiny, but were warned that they would not receive a friendly reception from key members of the committee.) After failing in these efforts, Drake turned to a reporter from the *Baltimore Sun.* As a result, Drake faced ten felony charges involving mishandling of classified information and obstruction of justice, which a judge wisely dismissed. The case of Bradley Manning also demonstrates the mindset of the Obama administration and the mainstream media. Although Manning has entered a plea of guilty to charges that would give him a 20-year prison sentence, the government is pursuing a charge of aiding the enemy, which would mean a life sentence. The government has also ignored the Sixth Amendment’s guarantee of a “speedy and public trial,” with Manning’s trial beginning on June 3, nearly three years after his arrest. The military handling of Manning, particularly its imposition of unconscionable solitary confinement, has amounted to abuse and is in violation of the Eighth Amendment’s prohibition of “cruel and unusual punishment.” The scant coverage of the trial in the press is another example of the marginalization of a whistleblower. The absence of checks and balances in the national security system over the past ten years has virtually assured the abuse of power that has taken place. In general, Congress has acquiesced in the questionable actions of both the Bush and Obama administrations since 2001, permitting foreign policy to be the sole preserve of the Executive Branch and not the shared responsibility of the President and the Congress. Congressional intelligence committees have become advocates for the intelligence community, particularly the CIA, instead of rigorous watchdogs. Similarly, the Armed Services committees have been advocates for the Pentagon and have not monitored the abuses of weapon’s acquisitions programs. Since the Vietnam War, we have observed a system of judicial tolerance, with the Supreme Court only intervening on foreign policy matters to endorse the policies and powers of the President. This deferential attitude toward the White House has resulted in an absence of judicial scrutiny of illegalities, including warrantless eavesdropping and the destruction of the torture tapes at the CIA that documented torture going beyond methods authorized by the Justice Department. Ironically, the destroyer of the 92 videotapes of interrogations, Jose Rodriquez, who ignored a White House order not to destroy the tapes and should have faced at least obstruction of justice charges, has published a book sanctioned by the CIA that maligns the OIG for a “holier-than-thou attitude and the prosecutorial ways they routinely treated fellow CIA employees.” In addition to the failure of Congress and the courts to provide necessary regulation and oversight of the national security process, the mainstream media has been complacent about its watchdog role regarding secret agencies in a democratic arena. The media require the efforts of contrarians and whistleblowers in order to penetrate the secrecy of the policy and intelligence communities, but typically ignore the reprisals taken against whistleblowers. Often, they disdain the information provided by whistleblowers that is critical of senior officials and government agencies preferring to protect their access to these officials. David Ignatius of the *Washington Post* falsely claimed that journalists “instinctively side with leakers,” but he was quick to ridicule Edward Snowden who has exposed NSA’s spying on millions of Americans‘ phone records and the Internet activity of hundreds of millions of foreigners. Ignatius, moreover, has been an apologist for the CIA and has relied on clandestine operatives to present a one-sided picture of the CIA’s National Clandestine Service. His novel (*Agents of Innocence*) provided a laudatory account of CIA tradecraft, relying on sensitive leaks from a senior operations officer. My own experience with the mainstream media as a whistleblower is revelatory. During my congressional testimony in 1991 against the nomination of Robert M. Gates as director of CIA, I provided background information to Elaine Sciolino of the *New York Times* in order to counter malicious rumors emanating from the White House that was designed to compromise my credibility. Sciolino initially reported this information accurately, but then tilted to support Gates’s confirmation. In a conversation several weeks after the confirmation hearings, Sciolino explained that it was becoming obvious that Gates would be confirmed and would be an important source to her as a CIA director. She added that, as I would return to the National War College as a professor of international relations, I would be of little further use. Sciolino noted that whistleblowers make good sources only in the short run, while journalists must rely on policymakers for long-term access and should not gratuitously offend them. This explains the conventional analysis offered by the press corps and its reluctance to challenge official sources. As a result of the imbalance in the process of foreign policy decision-making, we have come full circle from President Woodrow Wilson, who wanted to make the “world safe for democracy,” to Presidents George W. Bush and Obama, who find the world too dangerous to honoring constitutional democracy. **The excesses of the Vietnam War; Watergate; Iran-Contra; and the Global War on Terror have contributed to the creation of a dangerous national security state and a culture of secrecy. Whistleblowers can help all of us decide whether the ends justify the means regarding these excesses. Meanwhile, secrecy itself has fostered dangerous ignorance in the United States. The overuse of secrecy limits necessary debate and dialogue on foreign policy and deprives citizens of information on which to make policy and political judgments. Only a counter-culture of openness and a respect for the balance of power in the conduct of foreign policy can reverse the damage of the past decade. As long as Congress defers to the President in the conduct of foreign policy; the courts intervene to prevent any challenge to the power of the President in the making of foreign policy; and the media defer to authorized sources, we will need courageous whistleblowers.**

### Evans

#### Congress can do lots of things to protect military whistleblowers.

**Evans:** Evans, Josh [Contributor, Tech Freedom] “Congress Must Protect Military Whistleblowers.” *Tech Freedom.* July 2015. RP

**Over the last two months, TechFreedom has signed two letters urging members of Congress to enact legislation to protect whistleblowers within the military from retaliation. The first letter, issued on April 29, is addressed to Sen. Barbara Boxer (D-CA) in support of the Legal Justice for Servicemembers Act of 2015. The bill would overhaul existing laws, ensuring that military whistleblowers receive the same protections offered to civilian whistleblowers. Among other reforms, the bill would permit whistleblowers to legally challenge investigations launched against them in retaliation, and it would apply the Whistleblower Protection Act burden of proof against retaliation. Today, TechFreedom signed another letter also advocating protections for military whistleblowers, in this case from certain provisions of the National Defense Authorization Act. As the letter notes, “speaking out on wrongdoing in the military can be particularly challenging for service members who are trained to stay in line and follow orders. The stakes could not be higher for military whistleblowers who speak out against fraud, waste, abuse, and sexual assault in the military**. A recent report by the Government Accountability Office noted a number of deficiencies in the protections offered to members of the military who report wrongdoing, and far too often, those whistleblowers are unfairly punished for their efforts to bring accountability to the armed services.” **The letter, which was sent to several members of both the House and Senate armed services committees, highlights several sections of the NDAA that would help protect whistleblowers and should thus be preserved. These provisions establish similar protections against retaliation**, including assistance from the Special Victims’ Counsel, the creation of a strategy to prevent retaliation, and protections against conflicts of interest in investigations. Ultimately, the legislation discussed in these two letters will take an important step in providing the protection necessary for service members to help hold military accountable

### Schwellenbach

#### Current protections for whistleblowers aren’t working – further protections are needed.

**Schwellenbach:** Schwellenbach, Nick [Contributor, TIME Magazine] “Why Military Whistleblowers Fear Reprisal.” *TIME Magazine.* October 2011. RP

**In the chain-of-command-oriented military, whistleblowers rarely fare well**. Each year, hundreds of uniformed members of the military send official complaints to Inspectors General (IGs) within the Department of Defense (DoD) saying that they are the targets of reprisal. Most do not have their claims of reprisal substantiated. Even when IGs find that (1) a complainant blew the whistle through a protected channel for disclosure, (2) that the complainant was the subject of an adverse personnel action, and 3) that the manager taking that action knew of the complainant’s whistleblowing, those IGs sometimes still do not substantiate claims of whistleblower reprisal. Take, for instance, the case of Gene McCarty... It is a whistleblower case that did not generate front-page headlines in national newspapers. But it is extraordinary in the sense that, while so much evidence seems to indicate he was retaliated against for blowing the whistle on unsafe aircraft maintenance and for cooperating in an earlier investigation into senior command corruption in his unit, his claim of reprisal was not substantiated. McCarty is a soft-spoken Southern man who wouldn’t typically be pegged as the type to make waves. He spent 33 years in the military, 31 as a technician. He rose to the rank of a master sergeant in the Mississippi State Air National Guard’s 186th Air Refueling Wing at Key Field, near Meridian, Mississippi. He worked on KC-135 refueling jets. However, his decades of service came to an ignoble end. He was denied re-enlistment as a guardsman in February 2006, meaning his career in the National Guard was over. Although his retirement was not until a month later, he was placed on administrative leave and told to not report back to work. Then, he was met by “two security force members who escorted him to his work center to clear his personnel items and then off of the base,” according to an Air Force IG report of investigation (the investigation by the Air Force IG was sparked by McCarty’s claim that he was retaliated against). The IG report into McCarty’s case does not cite a reason for getting rid of him in such a brusque fashion. The day he was denied re-enlistment and escorted off base, McCarty said he was told that an anonymous call was made to security personnel stating vaguely that he had made threats. McCarty said he never threatened anyone and had no previous disciplinary problems. He said he mostly received “outstanding” and “excellent” performance ratings during his military career and no negative ratings. A spokesman with the Mississippi National Guard would not discuss McCarty’s case due, in part, to the five years that have passed since he was denied re-enlistment. But he did say that commanders have wide prerogative to deny re-enlistment. The official reason for the denial of McCarty’s re-enlistment was that McCarty was too senior for the position that he filled (this is known as “overgrade” or “overage”) and was blocking the advancement of junior technicians, according to the Air Force investigation report. Yet McCarty stresses there might be a reason he wound up in that position: he had been passed up for placement in master sergeant positions numerous times after he cooperated as a witness in an earlier IG investigation into senior-level corruption in the 186th. By Air National Guard regulation, he was supposed to have been placed in the first available master sergeant position that opened up. That didn’t happen. McCarty said his overgrade status was “used as a tool to get rid of me” after he blew the whistle to the Air Force IG on earlier occasions. Although the Air Force IG did not find that McCarty had been retaliated against, it did find that McCarty was a whistleblower because he made lawfully protected communications as both a witness in the earlier IG investigation and because he later disclosed that he believed unqualified personnel were tampering with aircraft flight controls. That later disclosure was substantiated and “resulted in changes to maintenance practices at the unit,” according to the IG report. The earlier investigation, sparked by disclosures from whistleblower Col. Jody Bryant, uncovered vast corruption and malfeasance by several senior commanders in the 186th Air Refueling Wing. **Some critics say there is reason to believe there are problems with how military whistleblower cases are handled**. Republican Senator Charles Grassley of Iowa said in a 2009 Senate floor speech, “During the course of my own investigation of several military whistleblower cases, I learned some matters which may question how effectively military whistleblower reprisal cases are handled by the DoD and DoD OIG.” The DoD IG oversees a network of military service IGs, such as the Air Force IG. **While there has been an uptick in the number of military reprisal cases submitted by military service IGs and the DoD IG, the low substantiation rate of those cases is cause for concern.** Recently, the DoD IG restructured its whistleblower program and has implemented new policies to improve its handling of reprisal cases. But the pattern of poor investigative outcomes may point to the need for changes to the military whistleblower protection law itself. The Air Force IG also said that McCarty suffered from an adverse personnel action—being denied re-enlistment— and that the official who denied him re-enlistment knew about his whistleblowing. In addition, the IG said that “anecdotal information from the [Mississippi National Guard] IG’s office seems to indicate that not reenlisting someone at this point in their career is unusual.” Another “anomaly” in the denial of McCarty’s re-enlistment was also documented by Air Force IG investigators. The investigation report stated that paperwork had “been completed indicating that MSgt McCarty’s extension was approved.” This means that someone within the 186th Air Refueling Wing assumed McCarty’s request for re- enlistment would be granted. “The fact that the form was signed by Lt. Col. [name redacted] seems to indicate that the MPF [Military Personnel Flight] also assumed the request would be approved,” the IG report noted. (The lieutenant colonel who assumed McCarty’s re-enlistment would be approved is not the lieutenant colonel who denied McCarty’s re-enlistment, McCarty said. McCarty added that the lieutenant colonel who denied his re-enlistment was working at the behest of a colonel, who, according to McCarty, had it in for him. A voice message was left with the colonel requesting comment. The colonel did not respond.) Despite the stack of evidence the Air Force IG found that seems to indicate reprisal, the IG decided to dismiss McCarty’s reprisal case, as documented in a September 2006 memo by the IG. The dismissal shut down one of McCarty’s main avenues for addressing the actions against him. The IG cited an assessment by a military lawyer working for the Mississippi State Air National Guard which said the decision to “disapprove MSgt’s McCarty’s request for re-enlistment is legally sufficient.” The Air Force IG investigators do not state that they sought a second, perhaps more independent, legal opinion. The IG assesses the facts it collects against the elements of the Military Whistleblower Protection Act and the regulations that interpret the law, the so-called “Acid Test.” In the analysis section of the IG report, the unredacted text in that section only describes the reasons McCarty’s command gave to the investigators. There is no unredacted text that assesses and reasonably dismisses the alternative explanation for McCarty’s job loss, that is, that he was subjected to reprisal. It’s possible that behind the redactions this is addressed. But when asked about this and other issues, a spokesman for the Air Force IG responded that the IG had no comment on the McCarty case because the office purges its records every two years and the IG does not normally comment on individuals due to concerns with the Privacy Act. Furthermore, in the “Motive” section, the IG investigators do not state that they checked on the 186th’s assertion that they cut McCarty loose to make room for new technicians to move up. There was time to assess this claim because the IG investigation wrapped up several months after McCarty made his complaint. The IG report only states, “retiring MSgt McCarty would theoretically open a position” (emphasis added). Learning whether the position was filled by a lower-level technician or not seems relevant. If the position had not been filled, doubt could have been cast on the 186th’s official explanation and supported McCarty’s belief that he was retaliated against in violation of the law. A lawyer familiar with how IGs assess both civilian whistleblower-reprisal and military-reprisal complaints said the Air Force IG’s “rationale [for dismissing] seems funky.” He added that he thinks that if McCarty’s was a civilian, rather than military, reprisal case, the facts would be assessed under different evidentiary standards and the Air Force IG probably would have substantiated reprisal against McCarty. The lawyer asked not to be named because he regularly interacts with military service IGs and the DoD IG. In late 2003, the Government Accountability Office (GAO), **Congress’s investigative arm, issued a report on National Guard whistleblowers, a subset of military whistleblowers. It states that, compared to civilian whistleblowers, military whistleblowers face more obstacles in proving they were retaliated against. “In military whistleblower investigations the evidentiary standard is preponderance of evidence,” the report states, “which means that the evidence that the investigator must determine is of greater weight or more convincing than the evidence presented in opposition to it**.” But “in civilian cases, management must prove by clear and convincing evidence that it would have taken a personnel action regardless of a protected disclosure,” the GAO noted. “Clear and convincing evidence requires a degree of proof more demanding than preponderance.” Thus, this difference in the burden of proof makes it easier for military services to prove they were not retaliating against whistleblowers than it is for civilian government agencies to prove the same thing. This difference makes it more difficult for IGs to substantiate military whistleblower complaints of reprisal. And indeed few military reprisal allegations are substantiated. “For most of the reprisal allegations we reviewed,” the 2003 GAO report stated, “guard management demonstrated to the satisfaction of an Inspector General that it would have taken the same course of action in the absence of a protected disclosure.” If the evidentiary standards were different, this does not necessarily mean the Air Force IG would have arrived at a different conclusion in the McCarty case. But it would have been more likely that his claim of reprisal would have been substantiated. As for McCarty, he recently told me in an email, “**Anyone who is willing to stand up and tell the truth is committing suicide in today’s society.” “The day of telling the truth is gone.” Let’s hope that’s not the case.**

### Edmonds

#### We should abolish the military

**Edmonds:** Edmonds, Brad [Contributor, Free Republic] “Four Reasons We Should Abolish the Military.” February 2004. RP

To address the common claim by neoconservatives that we owe our freedom to the men and women of the US military, I've written recently that we don't owe the military anything of the sort. While many soldiers, airmen, etc. died in combat believing they were defending our freedom, they were misguided in this belief. The "for our freedom" claim is false because our freedoms were won by the founders and written into law by them, hence a military created afterward could have had nothing to do with that; the freedoms then created have only eroded over time, and the military did not prevent this (and could not, not being part of the legislative process); the military has never been necessary to prevent our freedoms being taken by other countries, as historians available all over the web are now making clear; and the military over the last century has only executed the adventurous whims of individual congressmen and presidents, and in so doing has been the muscle behind needlessly making the rest of the world hate us. Aside from looking at the past, there are compelling reasons we should abolish all government military forces now.

### Posner

#### We should ban ISIS propaganda and recruiting on campus

**Posner:** Posner, Eric [Eric Posner, a professor at the University of Chicago Law School, is author of [The Twilight of International Human Rights Law](http://www.amazon.com/dp/019931344X/?tag=slatmaga-20). Follow him on [Twitter](https://twitter.com/EricAPosner).] “ISIS Gives Us No Choice but to Consider Limits on Speech.” Slate. December 2015. RP

**It has become increasingly clear that terrorist groups such as ISIS can extend their reach to American territory via the Internet. Using their own websites, Twitter, Facebook, YouTube, and other platforms, they lure young men and women to their mission—without having to risk the capture of foreign agents on U.S. soil. The Americans ensnared in ISIS’s net in turn radicalize others, send money to ISIS, and even carry out attacks. Never before in our history have enemies outside the United States been able to propagate genuinely dangerous ideas on American territory in such an effective way —and by this I mean ideas that lead directly to terrorist attacks that kill people**. The novelty of this threat calls for new thinking about limits on freedom of speech. What can we do? Proposals that Internet companies “shut down” dangerous communications have been met with howls of laughter from Silicon Valley. It’s easy for determined jihadis to replace shuttered websites with new ones and hard for Internet companies to keep track of billions of communications. Using the law to force Facebook and Twitter to do more to block ISIS propaganda would make sense but also falls short of what is needed. No approach is perfect, but there is a way to deal with these problems. Consider Ali Amin, the subject of a recent article in the New York Times. Lonely and bored, the 17-year-old Virginia resident discovered ISIS online, was gradually drawn into its messianic world, eventually exchanged messages with other supporters and members, and then provided some modest logistical support to ISIS supporters (instructing them how to transfer funds secretly and driving an ISIS recruit to the airport). He was convicted of the crime of material support of terrorism and sentenced to 11 years in prison. Amin did not start out as a jihadi; he was made into one. Researchers at George Washington University identified 300 U.S-based ISIS sympathizers who use Twitter and other social media to lure Muslim Americans into the arms of ISIS. These American citizens and residents—themselves the fruit of the recruiting efforts of foreign ISIS members as well as of other Americans—frequently use a graduated approach so as to avoid alarming people who are merely curious about Islam: **But there is something we can do to protect people like Amin from being infected by the ISIS virus by propagandists, many of whom are anonymous and most of whom live in foreign countries. Consider a law that makes it a crime to access websites that glorify, express support for, or provide encouragement for ISIS or support recruitment by ISIS; to distribute links to those websites or videos, images, or text taken from those websites; or to encourage people to access such websites by supplying them with links or instructions.** Such a law would be directed at people like Amin: naïve people, rather than sophisticated terrorists, who are initially driven by curiosity to research ISIS on the Web.

#### Counterplan solves

**Posner:** Posner, Eric [Eric Posner, a professor at the University of Chicago Law School, is author of [The Twilight of International Human Rights Law](http://www.amazon.com/dp/019931344X/?tag=slatmaga-20). Follow him on [Twitter](https://twitter.com/EricAPosner).] “ISIS Gives Us No Choice but to Consider Limits on Speech.” Slate. December 2015. RP

The law would provide graduated penalties. After the first violation, a person would receive a warning letter from the government; subsequent violations would result in fines or prison sentences. **The idea would be to get out the word that looking at ISIS- related websites, like looking at websites that display child pornography, is strictly forbidden.** **As word spread, people like Amin would be discouraged from searching for ISIS-related websites and perhaps be spared radicalization and draconian punishment for more serious terrorism-related crimes**. The law would not deter sophisticated terrorists who send one another encrypted messages. That’s not its point. **ISIS seeks to recruit Americans on American soil; in order to recruit from the public, it obviously cannot act secretly. It must instead broadcast widely and rely on surrogates to broadcast widely, in order to reach an audience of nonradicalized Muslims. This is a vulnerability. When people discover ISIS websites and circulate them by Twitter, Facebook, and other public websites, those people often disclose their identities**. Many are too naïve to use pseudonyms; others reveal their identities to their ISPs, which can be forced to cough them up to police. Teenagers who are curious about ISIS but not yet committed to it are unlikely to use complicated encryption technologies to mask their identities from ISPs. **Laws directed at this behavior would make a dent in recruitment, and hence in homegrown radicalism, even if they do not solve other problems.**

#### A2 deters research

**Posner:** Posner, Eric [Eric Posner, a professor at the University of Chicago Law School, is author of [The Twilight of International Human Rights Law](http://www.amazon.com/dp/019931344X/?tag=slatmaga-20). Follow him on [Twitter](https://twitter.com/EricAPosner).] “ISIS Gives Us No Choice but to Consider Limits on Speech.” Slate. December 2015. RP

**One worry about such a law is that it would discourage legitimate ISIS-related research by journalists, academics, private security agencies, and the like. But the law could contain broad exemptions for people who can show that they have a legitimate interest in viewing ISIS websites. Press credentials, a track record of legitimate public commentary on blogs and elsewhere, academic affiliations, employment in a security agency, and the like would serve as adequate proof.**

#### It competes – the law violates the First Amendment

**Posner:** Posner, Eric [Eric Posner, a professor at the University of Chicago Law School, is author of [The Twilight of International Human Rights Law](http://www.amazon.com/dp/019931344X/?tag=slatmaga-20). Follow him on [Twitter](https://twitter.com/EricAPosner).] “ISIS Gives Us No Choice but to Consider Limits on Speech.” Slate. December 2015. RP

**The obvious problem with this law is that the courts could strike it down under the First Amendment. Under current doctrine, such an anti-propaganda law is unconstitutional because it would interfere with the right of people to receive or read political information—as would proposed laws that would require Internet companies such as Facebook and Twitter to remove ISIS-related propaganda from their websites. The Supreme Court has held that the government can ban political speech only when it poses** an immediate threat to public safety**, as when an orator encourages a crowd to go on a rampage.** Speech that blasts the American constitutional system and praises America’s enemies has been held constitutionally protected time and again.

#### Counter-speech and open dialogue don’t make sense in this context – action must be taken now to fight ISIS

**Posner:** Posner, Eric [Eric Posner, a professor at the University of Chicago Law School, is author of [The Twilight of International Human Rights Law](http://www.amazon.com/dp/019931344X/?tag=slatmaga-20). Follow him on [Twitter](https://twitter.com/EricAPosner).] “ISIS Gives Us No Choice but to Consider Limits on Speech.” Slate. December 2015. RP

**The major justification for freedom of speech is the marketplace of ideas—the claim that if people can say whatever they want, the best ideas will flourish.** But just what is it that we can learn from ISIS? **The social value of beheading apostates? The finer points of crucifixion?** **Those who regard free speech as fundamental need to consider whether legal principles that arose centuries ago make sense in the age of Snapchat.** It is possible, as Cass Sunstein has explained in Bloomberg View, to modify the current test for free speech violations so as to advance public safety without throwing out important protections for dissent. A simple balancing test would permit laws to target dangerous speech that does not advance public debate. It’s possible that the propaganda threat from radical Islam will peter out on its own. Many Internet companies already censor pro-ISIS websites and accounts—which they can do because the First Amendment does not require private companies to protect the speech of their customers. And law enforcement authorities have used the material support statute aggressively, as in the case of Amin, to crack down on anyone who takes a step beyond mere advocacy. My colleague Geoffrey Stone has argued that the U.S. government has usually overreacted to foreign threats by cracking down on civil liberties, hurting people who would never have caused harm. During World War I, for example, the government punished dissenters who merely criticized the war and were not spreading German propaganda or trying to recruit agents. If Stone is right, we should be careful to avoid overreacting again.

### Sherry

#### We should ban hate speech when it’s inflicted upon minorities by the majority.

**Sherry:** Sherry, Suzanna [Professor of Law, University of Minnesota] “Speaking of Virtue: A Republican Approach to University Regulation of Hate Speech.” *Minnesota Law Review.* 1991. RP

**One advocate of hate speech regulations, for example, pro- vides a list of examples of speech that would or would not be prohibited under her scheme: anti-white speech by blacks would be permitted, but not anti-Semitic speech by blacks or whites. Zionism would be permitted only to the extent that it "aris[es] out of the Jewish experience of persecution," but not where it is a statement of white supremacy (the latter, presum- ably, typified by Arab-Israeli conflicts). Claims that the Holo- caust never occurred would be prohibited, for such claims "are just as hateful, for all [their] tone of distorted rationality," as other anti-Semitic speech. Finally, as to collecting and display- ing Nazi regalia or similarly hateful symbols, the Anti-Defama- tion League would be permitted to do so but a hypothetical "Gestapo Collector's Club" would not. Another influential proponent of hate speech regulations notes explicitly that the evil of hate speech depends in large part on "the context of the power relationships within which [the] speech takes place**."' 5 Thus, for example, his proposal "would prohibit a white woman from disparaging a black or gay man, but not a white, heterosexual man.' **Moreover, neither epithets such as "honky" nor the demeaning and silencing of political conservatives would qualify as prohibitable hate speech**.' 7 Another law professor proposed a similar hierarchy on the ground that "[c]alling a white a 'honky' . . . is not the same as calling a black a 'nigger'" and thus only the latter should be punished.

### Douglas-Scott

#### Lacan votes neg – free speech obfuscates the ability to explore the unconscious.

**Douglas-Scott:** Douglas-Scott, Sionaidh [Professor, School of Law, King’s College in London] “PSYCHOANALYSIS, SPEECH ACTS AND THE LANGUAGE OF ‘FREE SPEECH’.” *Res Publica.* Volume 4, Number 1. 1998. RP

**First, a brief excursion into psychoanalytic theory reveals a very different approach to speech and language. Initially, the psychoanalytic situation might seem to have something in common with the liberal paradigm of self-expression and autonomy**. For why is free, uncon- strained speech ("the talking cure") so important in the context of an analytic session? Well, it is important in order to improve our self- understanding and to explore our hidden depths and repressions, which will somehow come to light through speech, language and self- expression. **But how disturbing then, if the very means which should permit this self-understanding - - language - - should not be the transparent entity, the conduit, that we might suppose it to be.** **Work in psychoanalytic theory presents a very different view of language and speech from the traditional self-congratulatory liberal analyses of speech. The focus is instead on how language performs, obfuscates, confuses and misleads us. A strong reason for rebutting the presumption in favour of free speech comes specifically from the theory of language of Jacques Lacan, which stresses the obfuscation of language and its grounding in desire and lack, rather than in its ability to describe the world successfully or in its ability to enable us to attain truth or autonomy.**

#### Lacanian subjectivity justifies constraints on speech that adversely affects a speaker to cause harm.

**Douglas-Scott:** Douglas-Scott, Sionaidh [Professor, School of Law, King’s College in London] “PSYCHOANALYSIS, SPEECH ACTS AND THE LANGUAGE OF ‘FREE SPEECH’.” *Res Publica.* Volume 4, Number 1. 1998. RP

\*\*\*Bracketed for offensiveness

**Another very common conception of language that is undermined by the Austinian and Lacanian accounts is that the speaker and hearer are in a symmetrical position. If speaking is acting, then only one party can commit that act and certain acts will undercut the supposed freedom of the listener in the very act of their utteranc**e, as Austin's category of perlocutionary speech acts illustrates. Lacan's approach is to concentrate on certain classes of speech act in which pronouns behave in a rather odd way - - something he calls "founding speech" - - archetypally a form of naming of the Other that is also a transformation of the subject. Founding speech transforms both parties in the act of saying: The form in which language is expressed itself defines subjectivity... [I]t refers itself to the discourse of the other. As such it is enveloped in the highest function of speech, in as much as speech commits its author by investing the person to whom it is addressed with a new reality, as for example, when by a ~Youare my wife" a subject marks himself with the seal of wedlock. This is in fact the essential form from which all human speech derives rather than the form at which it arrives. **The Other is transformed: but the crucial aspect of founding speech for Lacan is that the *subject* is also transformed**. Such propositions ("You are my wife") necessarily imply another proposition, "I am your husband." These are certainly speech acts in Austin's sense, even though they do not include performative verbs -- indeed they go beyond those acts he studied most closely in *necessarily* implicating both the subject and the other in the act. **Lacan's category of founding speech goes one stage further than Austin's description of speech acts, albeit in the same direction: founding speech is an invocation in which the I and the you are simultaneously modulated. Can this not work in a legal framework? Writers such as Matsuda have stressed the transformative power of speech. The speech of the neo-Nazi skinheads in *Jersild* does not necessarily transform the victim listener into what they are derided for being, but it does *create* a [survivor] ~~victim~~, witnessed by the fact that there were no complaints to the radio station broadcasting the programme-- not because no-one was offended, but because the victims were scared to complain: a silencing. It also identifies the skinheads as racist thugs.**

#### Butler’s justifications for free speech are unwarranted conjecture.

**Douglas-Scott:** Douglas-Scott, Sionaidh [Professor, School of Law, King’s College in London] “PSYCHOANALYSIS, SPEECH ACTS AND THE LANGUAGE OF ‘FREE SPEECH’.” *Res Publica.* Volume 4, Number 1. 1998. RP

Thus Butler's work presents an important challenge to the argument of this paper. This challenge would appear to operate at two levels. **First, it is not clear to what extent Butler actually accepts the notion that speech acts may function as illocutions**. On the one hand, she expresses scepticism about accounts which conflate speech and act, thus seeming to attack Austin (although she provides little in support of this claim). Elsewhere, however, her criticism seems to be directed towards accounts which present speech acts as always efficacious, seeming to suggest that there are many examples of failed performatives w a claim which Austin would, of course, have accepted -- such as the hate speech which does not in fact succeed in constituting its object as victim, thus leaving the way open to a critical response. Since Butler writes of reworking a theory of the performative*,* one assumes that her theory is based on the latter, but her approach is equivocal. Second, Butler generally seems to oppose the state regulation of speech, seeing it as a censorship that itself "produces" an undesirable type of speech which works against a critical refiguration of hate speech by those attacked by it in the first instance. **Although Butler's arguments seem initially distant from those "usual suspects" offered by liberal theorists, on a closer examination, she in fact shares much with them- a distrust of state censorship and official discourse** (even if these undesirables are recast by Butler as examples of productive rather than repressive power). **Butler also seems to display a faith in the ability of language to revitalise itself, to run against the grain, indeed to "work itself pure", which has much in common with liberal optimism in "the market place of ideas" and the salutary powers of free speech.** Butler's belief in refiguration also relies on the ability of victimised groups to rework and redirect offensive ideas against their perpetrators, confident that offensive structures may be destroyed through such novel reiteration. **However, she offers little evidence in support of such optimism - - and evidence is surely required in the face of the more detailed records of injury, victimisation and ultimately silencing offered by such writers as Delgado and Matsuda. Thus, although Butler's work is heavily engaged with the theories which are the focus of this paper and although she provides an important reworking of speech act theory, I submit that her arguments for a politics of the performative are not fatal to those who argue in favour of the regulation of hate speech.**

### Mitchell

#### Plan can’t solve – protests are stymied by property interests – their author

**Mitchell**: Mitchell, Don [Professor of Geography, Syracuse] “THE LIBERALIZATION OF FREE SPEECH: OR, HOW PROTEST IN PUBLIC SPACE IS SILENCED.” *Stanford Agora.* Volume 4. 2003. RP

**The first case study concerns the privatization of public space. Note, in the 1939 Hague decision quoted above, the phrase, "wherever the title ... may rest." As the geography of the public forum has shifted, that title - that is, the status of space as property - has taken on added significance. It is hardly news to point out that privately-owned but publicly- accessible spaces, like malls, shopping centers, and festival market places have become primary gathering places in North American cities. But since public space is not only a space of politics, but also a space of sociable gathering (and, indeed, each has historically been essential to the success of the other); and since political speech has its greatest impact if it occurs where the people are; then while the privatization of public space may not be news, it is nonetheless of incredible importance. This is so, in part, because the Supreme Court has declared that the First Amendment simply does not extend into the space of the mall. The property rights of the owners trump the rights of citizens to political speech.**

### Tsesis

#### Most hate speech is protected – unless there’s an intention to literally kill someone, the Aff has to defend it.

**Tsesis:** Tsesis, Alexander [Professor, Loyola University School of Law] “Burning Crosses on Campus: University Hate Speech Codes.” December 2010. RP

**The Brandenburg standard prevents the punishment of empty or even emotionally charged threats. It aims to prevent the government from persecuting anyone who jokingly, in the heat of the moment, or out of simmering anger, urges unlawful conduct**. Professor Thomas Healy's recent claim that criminal advocacy is part of the search for truth, self- government, or self-fulfillment 4 does not get at the core of the decision's holding. In fact, criminal advocacy coupled with intent to bring about the  crime is unlike the Ku Klux Klan scenario of Brandenburg. The Klan gathering was at a private location with only one person, the invited journalist, not a participant of the rally. Unlike Frohwerk,Debs, and Schenck, the inflammatory language in Brandenburgwas not directed to a public audience. **As I will explain below, the Court has found that expression of hate only becomes criminal when it is advocacy calculated to achieve criminal conduct. General racist statements at public university campuses are probably protected forms of expression**, but when a person stands up in a classroom or in the college commons area and advocates the commission of specific criminal conduct, his statements are no longer immune from campus regulation and criminal prosecution.9 6 No educational purpose is served by criminal incitement on campus that incorporates symbols historically linked to violence, such as swastikas and burning crosses. 97

#### Counterspeech isn’t as useful as speech laws – laws give victims recourse and reparations.

**Tsesis:** Tsesis, Alexander [Professor, Loyola University School of Law] “Burning Crosses on Campus: University Hate Speech Codes.” December 2010. RP

**The notion that counterspeech will adequately combat group hatred and promote civil liberties, and is sufficient to maintain tolerance on campus, which Nadine Strossen and the ACLU have advanced, has been roundly rejected by the international community.** The U.S. Supreme Court has now endorsed the consensus perspective on free speech policy. **Just as with sexual harassment in the workplace, counterspeech is an inadequate remedy for the direct, intimidating attack of hate speech. Racism, chauvinism, ethnocentrism, and xenophobia are too deeply embedded in culture to be changed overnight**. While public attitudes are being changed, hate speech continues to menace out-groups. **Telling a university employee subject to racial or sexual coercion, racial degradation, or ethnic insults to simply respond to antagonists provides victims no legal redress but mere platitudes. Just as responding to comments in a hostile environment does not solve the problem of workplace harassment, neither does counterspeech decrease the risk posed by advocacy groups committed to carrying out a campus campaign of group intimidation, exclusion, and discrimination**. Expecting students at public universities to simply talk things out and convince those who intimidate them of the fallacy of their threatening words and behaviors fails to provide a procedurally cognizable way of seeking legal redress. The mantra of more speech is based on libertarian faith that the world community discounted after it understood the effectiveness of antisemitic Nazi propaganda**. It also elevates harassment and intimidation to an equal plane with dialogue.** To the contrary, the former is a means of disengagement with its reviled object, while the latter is a form of mutual engagement between the interlocutors.

#### Hate speech causes school shootings

**Tsesis:** Tsesis, Alexander [Professor, Loyola University School of Law] “Burning Crosses on Campus: University Hate Speech Codes.” December 2010. RP

**The potential harms are well illustrated by one of the most heinous cases of school hate speech. Dylan Klebold and Eric Harris revealed their murderous intentions, laced with neo-Nazi terms, before their gruesome attack against fellow students at Columbine High School**. **Had a hate speech policy been in place, school officials might have stopped them from carrying out their plans. The school did not take adequate notice of their wearing swastikas at school; writing essays about hatred, murder, and destruction; and presenting a class video project depicting their planned shooting spree. Similarly, Jeff Weise went on a murderous rampage at his Red Lake, Minnesota, high school after extensive racial supremacist comments he expressed at school and on websites like www.nazi.org. Although not a hate speech case, the shooting spree at Virginia Polytechnic Institute and State University ("Virginia Tech") should be mentioned in this context because it demonstrates the real risk of administrative inaction.** Before Seung Hui Cho killed thirty-two and injured many others, he had written a story for his college creative writing class depicting a young man killing fellow students before committing suicide.283 Even though the creative writing professor informed university officials of his concern about the violent nature of the composition, university officials decided not to intervene.284 It became obvious that something should have been done. **If the facts are changed and a student writes a project publically extolling and advocating the eliminationist ideologies of the Nazi Party, the Khmer Rouge, the Ku Klux Klan, or radical Islamicism, or some such genocidal or violent organization, universities should have means of dealing with what may amount to realistic threats.**

### Cobb

#### Free speech can be invoked at any time to avoid discussion or culpability for racism and shift blame onto minorities instead

**Cobb:** Cobb, Jelani [Writer, The New Yorker] “RACE AND THE FREE-SPEECH DIVERSION.” *The New Yorker.* November 2015. RP

**Of the many concerns unearthed by the protests at two major universities this week, the velocity at which we now move from racial recrimination to self- righteous backlash is possibly the most revealing**. The unrest that occurred at the University of Missouri and at Yale University, two outwardly dissimilar institutions, shared themes of racial obtuseness, arthritic institutional responses to it, and the feeling, among students of color, that they are tenants rather than stakeholders in their universities. **That these issues have now been subsumed in a debate over political correctness and free speech on campus—important but largely separate subjects—is proof of the self-serving deflection to which we should be accustomed at this point. Two weeks ago, we saw a school security officer in South Carolina violently subdue a teen-age girl for simple noncompliance, and we actually countenanced discussion of the student’s culpability for “being disruptive in class.” The default for avoiding discussion of racism is to invoke a separate principle, one with which few would disagree in the abstract—free speech, respectful participation in class—as the counterpoint to the violation of principles relating to civil rights.** This is victim-blaming with a software update, with less interest in the kind of character assassination we saw deployed against Trayvon Martin and Michael Brown than in creating a seemingly right-minded position that serves the same effect.

### Nielsen

#### Counter-speech is unlikely to occur in one on one interactions – the community won’t stand behind these people.

**Nielsen:** Nielsen, Laura Beth [Laura Beth Nielsen is a sociologist and lawyer whose research field is the sociology of law, with particular interests in legal consciousness (how ordinary people understand the law) and the relationship between law and inequalities of race, gender, and class. She is a research professor at the American Bar Foundation, as well as a professor of sociology at Northwestern University. She is the author of License to Harass: Law, Hierarchy, and Offensive Public Speech (2004), which studies racist and sexist street speech, targets’ reactions and responses to it, and attitudes about using law to deal with such speech.] “Civility in the Streets: Reactions, Responses, and Resistance to Public Speech.” Insights On Law and Society. Winter 2013. RP

What advice do judges give to targets of unsolicited or offensive speech? More speech. Allow the deliberative process to take place. We are supposed to engage in a “free trade in ideas” (Abrams v. U.S., 1919) and trust that “the best test of truth is the power of the thought to get itself accepted in the competition of the market” (ibid.). The idea of more speech was also famously declared by Justice Brandeis in his concurring opinion in Whitney v. California (1927). Brandeis wrote, “[i]f there be time to expose through discussion the falsehood and fallacies, to avert the evil by process of education, the remedy to be applied is more speech, not enforced silence.” Indeed, both legal experts and ordinary citizens claim that it is not proper for law to intervene in offensive public speech encounters, at least those that revolve around racist and sexist speech. The jurisprudentially preferred solution for the problem of offensive speech (of some varieties) is more speech. This formulation of the problem (that an offensive idea has been inserted into the marketplace of ideas) crowds out other definitions of what precisely may be problematic about being the target of racist or sexist speech in public places. For example, a target might feel threatened, objectified, or dehumanized. In the course of day-to-day life, targets of racist or sexist speech are reminded of their subordinate social status or their status as sex objects. Framing the problem of offensive speech as skewing a “marketplace of ideas” makes the remedy of more speech seem sensible. After all, markets are thought to run well when they are unregulated and the power of a good product/idea will prevail in the end. Thus, rather than looking to the courts to prevent the offensive speech from entering the marketplace, consumers of ideas are expected to reject the bad ones, insert the better ones, and eventually prevail. **Unfortunately, judicial prescriptions for more speech are typically vague. Should a target of offensive speech (or consumer of ideas in a marketplace) respond directly? Immediately? Should she hold a protest or rally at a later time to condemn the idea?** **We do not know precisely what is imagined by the judiciary’s instruction to engage in “more speech,” but in what follows, we see what some individual targets think and do when unexpectedly confronted with offensive speech in public places.** In some contexts, more speech may be just what is called for. **Organized counterspeech is documented and advocated as a remedy in the face of organized hate speech**. Examples include the organized counter demonstrations that occurred when Nazis marched through the largely Jewish community of Skokie, Illinois, and recent organized counter demonstrations at political gatherings, health clinics, and veteran funerals. **In a policed public environment, counterspeech may be effective and safe. But what of the victim of individual, targeted hate speech in public? What kind of speech effectively counters the “truth” of a racial epithet or sexual slur? And how likely are targets to respond? Unfortunately, the reality of public life is that** counter-speech is infrequent at best**.**

#### Women won’t talk back in the face of sexual harassment – counter-speech does *nothing.*

**Nielsen:** Nielsen, Laura Beth [Laura Beth Nielsen is a sociologist and lawyer whose research field is the sociology of law, with particular interests in legal consciousness (how ordinary people understand the law) and the relationship between law and inequalities of race, gender, and class. She is a research professor at the American Bar Foundation, as well as a professor of sociology at Northwestern University. She is the author of License to Harass: Law, Hierarchy, and Offensive Public Speech (2004), which studies racist and sexist street speech, targets’ reactions and responses to it, and attitudes about using law to deal with such speech.] “Civility in the Streets: Reactions, Responses, and Resistance to Public Speech.” Insights On Law and Society. Winter 2013. RP

**Reactions and responses to both race-related and gender-related street speech are the product of complicated calculations made by the targets of such speech. While some targets speak back and convey a message to the speakers (and to everyone else who witnesses such interactions), it is far more common for targets to ignore the speech altogether (or to have a hidden response). It is probably not surprising that targets of such speech, whether they report responding to such speech or not, said that they weighed their options very carefully when deciding how and whether to respond, and that the most important factor that determined their response was their own safety in the situation. These comments are more than just uncivil or offensive, they engender fear for physical safety, just as many critical race scholars have claimed. And since women are statistically more likely to fear for their physical safety when they are made targets of sexually suggestive speech than men, “more speech” disproportionately burdens women by requiring that they overcome their fears for their safety more often than men.** This is in addition to the bur den placed by the “more speech” idea in the first instance.

### Cornett

[Could this be a reps K?]

#### Campus free speech is used blame student activists and *prevent structural action* against racism

**Cornett:** Cornett, Sarah [Sarah Cornett is a senior at Whitman College, and the editor of the student-run weekly newspaper, The Pioneer] “Racism on Campus - Not Free Speech - Is the Real Story: Mainstream Media Are Missing the Mark.” *Truthout.* December 2015. RP

**Of all the images that accompanied articles on the recent protests against systemic racism at the University of Missouri, a screenshot of a professor shouting at a student photojournalist somehow became one of the most prevalent**. "I need some muscle over here," said Melissa Click, an assistant professor of communications at Missouri, attempting to grab his camera "Help me get this reporter out of here." Anyone following events at the university has likely read this quote many times over. As the clip gained traction on social media, national news organizations began to pay attention. The New York Times ran an article describing the incident on its website's home page. The Atlantic, now infamous for its articles lambasting college students for being "hypersensitive," followed up with a piece by Conor Friedersdorf calling Click's outburst an example of the problem with the idea of "safe space." Part of the media obsession with Click clearly had to do with the nature of the subject itself: threats to journalists tend to draw the attention of journalists. But looking at student accounts from that week show that the story was about much more than a confrontation between protesters and a photographer. **The incident became a media distraction from the real issues - direct threats to students, and the complicity of faculty and school officials in them. As part of the free speech backlash, some journalists took it upon themselves to educate student protesters on how to be proper activists**. "To truly demonstrate self-determination, activists would do well to also learn how to use the media to amplify their story," wrote Deborah Douglas and Afi-Odelia Scruggs in the Columbia Journalism Review. **Journalists effectively turned the spotlight on themselves and used protest movements led by Black students against systemic racism and violence as a platform for their own voices**. The sophisticated organizing and concrete successes of these movements - the University of Missouri system president resigned within days, after all - were ignored. Instead, student activists were told they need a lesson in working with media. "Here was an activist group that needed us to get their message out and they were trying to shut us down," Brian Kratzer, a journalist reporting on the events for the Columbia Missourian, told NPR "Maybe they didn't understand how public spaces work." **The focus on free speech offered an easy critique of student activists.** An important but abstract principle was elevated to become the crux of the story. This strategy is one that New Yorker writer Jelani Cobb called that week "victim-blaming with a software update." **The First Amendment narrative has allowed the media to disregard daily threats students of color are calling attention to at Missouri, Yale and dozens of other campuses. "To understand the real complexities of these students' situation," Cobb wrote, "free- speech purists would have to grapple with what it means to live in a building named for a man who dedicated himself to the principle of white supremacy and to the ownership of your ancestors**." Cobb was referring to Yale, where students have been fighting to change the name of Calhoun College, named after the Confederate general**. In stories on the Yale protests, reporters honed in on a video of a student confronting a residential college master over an email as further evidence of a supposed threat to free speech. But the reasons for students' mobilization - racialized harassment and administrative complicity in it - were repeatedly ignored.** Junior Briana Burroughs called attention to the deeply unsafe campus culture students continue to fight against when she described ways she'd been verbally and physically harassed at fraternity parties. "Fear paralyzed me as their discussions of my Black body and hair turned into taunts and fondling. Every incident included jeering and pointing, and some included spanking and screaming," wrote Burroughs in the Yale Daily News. "Most, however, went unnoticed." As Yale senior Aaron Lewis pointed out on Medium, media discussion of campus activism created a split dynamic: **A free-speech focus obscures the pressing problem of racism on campus. "People have lost sight of the larger issue: systemic racism on campus**," Lewis wrote. **The loss of focus on systemic racism that Lewis mentioned has become especially evident as free speech has been intellectualized as the problem of the "new student activism,"** and liberal college campuses. This came into focus at Yale when Erika Christakis, a live-in administrator at one of the residential colleges, questioned administrative cautioning against culturally appropriative Halloween costumes. "American universities were once a safe space not only for maturation but also for a certain regressive, or even transgressive, experience," she wrote in an email to students "Increasingly, it seems they have become places of censure and prohibition." Christakis pointed to the tired argument that US college students are creating environments of liberal intolerance through the tyranny of "safe spaces" and trigger warnings. In doing so, she negated the real threats cultural appropriation can cause to students of color. Should students really be required to educate their peers on the inappropriateness of wearing a feather headdress or blackface? **Colleges are expected to address overt threats to the mental and physical health of their students.** At the New Republic, Roxane Gay questioned whether those who make statements like Christakis' would believe that racism fell into this category. "Christakis suggests we take our arguments out of their real-world context - eliding real people in the process - and instead move them into the realm of the theoretical, where no one can feel hurt," she wrote. The tendency to intellectualize these situations distracts from the severity of racism and harassment and the threats to students' safety that are all too real. Students like Lewis, the Yale senior, make clear they don't see free speech principles as incompatible with fighting administrative complicity in racial injustice. But in working toward a clearer understanding of the climates these students are resisting, the polarization fostered by many media accounts made this work harder. "There's absolutely no reason we can't acknowledge both the value of free speech and the reality of the prejudice that students of color face everyday," wrote Lewis. "It saddens me that this has gotten to the point where people feel like they have to take sides." Since the week of November 9, media focus has shifted. International attacks by ISIS and the mass shootings in California and Colorado have rightfully commanded headlines in the past two weeks. However, looking back to that week - when media attention was very much focused on college protests against racism and this question of free speech - tells us much about how most news organizations think about student activists. As protests continue on campuses nationwide, Mrinal Kumar, a Yale Daily News columnist, called attention to the real power that students, undeterred by critical media attention, have in creating real change. "The last two weeks have proven that we have the power to incite change not only at Yale but also on campuses across the nation," Kumar said. "But we can't afford to stop there."

#### Journalist speech on campus becomes an excuse for media publicity and sensationalizing events, obscuring authentic discussion

**Cornett:** Cornett, Sarah [Sarah Cornett is a senior at Whitman College, and the editor of the student-run weekly newspaper, The Pioneer] “Racism on Campus - Not Free Speech - Is the Real Story: Mainstream Media Are Missing the Mark.” *Truthout.* December 2015. RP

**Of all the images that accompanied articles on the recent protests against systemic racism at the University of Missouri, a screenshot of a professor shouting at a student photojournalist somehow became one of the most prevalent**. "I need some muscle over here," said Melissa Click, an assistant professor of communications at Missouri, attempting to grab his camera "Help me get this reporter out of here." Anyone following events at the university has likely read this quote many times over. As the clip gained traction on social media, national news organizations began to pay attention. The New York Times ran an article describing the incident on its website's home page. The Atlantic, now infamous for its articles lambasting college students for being "hypersensitive," followed up with a piece by Conor Friedersdorf calling Click's outburst an example of the problem with the idea of "safe space." **Part of the media obsession with Click clearly had to do with the nature of the subject itself: threats to journalists tend to draw the attention of journalists.** But looking at student accounts from that week show that the story was about much more than a confrontation between protesters and a photographer. **The incident became a media distraction from the real issues - direct threats to students, and the complicity of faculty and school officials in them. As part of the free speech backlash, some journalists took it upon themselves to educate student protesters on how to be proper activists**. "To truly demonstrate self-determination, activists would do well to also learn how to use the media to amplify their story," wrote Deborah Douglas and Afi-Odelia Scruggs in the Columbia Journalism Review. **Journalists effectively turned the spotlight on themselves and used protest movements led by Black students against systemic racism and violence as a platform for their own voices.** The sophisticated organizing and concrete successes of these movements - the University of Missouri system president resigned within days, after all - were ignored. Instead, student activists were told they need a lesson in working with media. "Here was an activist group that needed us to get their message out and they were trying to shut us down," Brian Kratzer, a journalist reporting on the events for the Columbia Missourian, told NPR "Maybe they didn't understand how public spaces work."The focus on free speech offered an easy critique of student activists. An important but abstract principle was elevated to become the crux of the story. This strategy is one that New Yorker writer Jelani Cobb called that week "victim-blaming with a software update." The First Amendment narrative has allowed the media to disregard daily threats students of color are calling attention to at Missouri, Yale and dozens of other campuses. "To understand the real complexities of these students' situation," Cobb wrote, "free- speech purists would have to grapple with what it means to live in a building named for a man who dedicated himself to the principle of white supremacy and to the ownership of your ancestors." Cobb was referring to Yale, where students have been fighting to change the name of Calhoun College, named after the Confederate general. In stories on the Yale protests, reporters honed in on a video of a student confronting a residential college master over an email as further evidence of a supposed threat to free speech. But the reasons for students' mobilization - racialized harassment and administrative complicity in it - were repeatedly ignored. Junior Briana Burroughs called attention to the deeply unsafe campus culture students continue to fight against when she described ways she'd been verbally and physically harassed at fraternity parties. "Fear paralyzed me as their discussions of my Black body and hair turned into taunts and fondling. Every incident included jeering and pointing, and some included spanking and screaming," wrote Burroughs in the Yale Daily News. "Most, however, went unnoticed." As Yale senior Aaron Lewis pointed out on Medium, media discussion of campus activism created a split dynamic: A free-speech focus obscures the pressing problem of racism on campus. "People have lost sight of the larger issue: systemic racism on campus," Lewis wrote. The loss of focus on systemic racism that Lewis mentioned has become especially evident as free speech has been intellectualized as the problem of the "new student activism," and liberal college campuses. This came into focus at Yale when Erika Christakis, a live-in administrator at one of the residential colleges, questioned administrative cautioning against culturally appropriative Halloween costumes. "American universities were once a safe space not only for maturation but also for a certain regressive, or even transgressive, experience," she wrote in an email to students "Increasingly, it seems they have become places of censure and prohibition." Christakis pointed to the tired argument that US college students are creating environments of liberal intolerance through the tyranny of "safe spaces" and trigger warnings. In doing so, she negated the real threats cultural appropriation can cause to students of color. Should students really be required to educate their peers on the inappropriateness of wearing a feather headdress or blackface? Colleges are expected to address overt threats to the mental and physical health of their students. At the New Republic, Roxane Gay questioned whether those who make statements like Christakis' would believe that racism fell into this category. "Christakis suggests we take our arguments out of their real-world context - eliding real people in the process - and instead move them into the realm of the theoretical, where no one can feel hurt," she wrote. The tendency to intellectualize these situations distracts from the severity of racism and harassment and the threats to students' safety that are all too real. Students like Lewis, the Yale senior, make clear they don't see free speech principles as incompatible with fighting administrative complicity in racial injustice. But in working toward a clearer understanding of the climates these students are resisting, the polarization fostered by many media accounts made this work harder. "There's absolutely no reason we can't acknowledge both the value of free speech and the reality of the prejudice that students of color face everyday," wrote Lewis. "It saddens me that this has gotten to the point where people feel like they have to take sides." Since the week of November 9, media focus has shifted. International attacks by ISIS and the mass shootings in California and Colorado have rightfully commanded headlines in the past two weeks. However, looking back to that week - when media attention was very much focused on college protests against racism and this question of free speech - tells us much about how most news organizations think about student activists. As protests continue on campuses nationwide, Mrinal Kumar, a Yale Daily News columnist, called attention to the real power that students, undeterred by critical media attention, have in creating real change. "The last two weeks have proven that we have the power to incite change not only at Yale but also on campuses across the nation," Kumar said. "But we can't afford to stop there."

### Ceballos

#### Free speech is a construct created by whites to cement their privilege – it excuses racialized violence and aids Trumpian bigots

**Ceballos:** Ceballos, Cassandra [Writer, The Collegian.] “Opinion: Trump exemplifies why speech isn't really free. How Trump's rhetoric reflect white power.” *The Collegian.* September 2016. RP

-Accessibility; only some can access free speech

-Distracts from a structural critique of race relations

Some days I feel very lucky to be a Spider, given the difficult road I continue to navigate as a first-generation college student. But on other days, I’m caught off guard by the hatred and bigotry in this world, this country and apparently this campus. I no longer feel very lucky or even human. On these days, I do not intentionally wake up feeling targeted or hated. That is until an article, overheard conversation or poster freezes me. Abruptly, I’m no Spider, I am an “other.” The causes have nuances, but my reaction is routine: brain on overdrive and an instant need to distance myself, mentally and physically, from the sudden reality of my insignificance. This reaction happened to me walking through Spiderfest weeks ago as I headed to work. The merry sounds of chatter, music and Spider solidarity washed over me as I strolled through the tables, but the illusion of safety shattered as I witnessed something I was not prepared to see. The College Republicans brought a table to Spiderfest complete with “Trump/Pence” posters and paraphernalia. I don’t know why I was so surprised, so caught off guard. **Despite effort at every level of the university to promote an inclusive, diverse and accepting environment, it is well-known that some on this campus readily silence the voice of their peers, exposing themselves with op-ed pieces about Donald Trump or safe spaces. The ultimate irony of the ideology is they feel it is their speech that is being attacked, their rights being pushed to the wayside for the sake of "feelings." Much of Trump rhetoric indulges this view of free speech, positing that** people say and do as they feel, no matter whom it targets and to hell with the externalized consequences. **Here’s the problem: his rhetoric, the rhetoric of his supporters, the rhetoric of the above pieces and Hillary Clinton’s hispandering silence not only the voice of citizens, but erase entire narratives and ensures speech from the "other" never materializes. White supremacy, intimately entwined with Trumpism, fundamentally maintains the status quo of which speech is free and for whom. I challenge you to reconceive the notion of "free speech.**" Consider the field surrounding its invocation. **With cursory examination, history speaks for itself: free speech is a myth, concocted by and for the powerful while they simultaneously annihilated, enslaved and colonized a majority of the world’s population for centuries. How dare we debate degrees of freedom of speech in a land methodically fashioned to never be free for all but only free for some?** The "other" may change, but power remains shockingly static. **Trump’s version of free speech basically demands the right to vocally strip individuals of their humanity**. His minions prove this, assaulting silent protestors at his rallies with jeering support from the King Clown himself. **Trumpism promotes forcefully removing someone from an airplane for speaking Arabic, gets bullets fired at Mosques, citizens assaulted in grocery stores or on sidewalks. It bombed a church in Birmingham, got Dylann Roof a Big Mac after he murdered nine people and gave Philando Castille four bullets and a fatherless daughter after he complied with a police officer.** While pro-Trump Spiders may not get physical, please understand that silent support of the entity that encourages such behavior is in itself a violent act, impugning on vitality. For the protected, whose rhetoric and ideology Trumpism does not explicitly target, Trump can be isolated as a presidential candidate, albeit a very poor and obviously dangerous one. His nonsensical spouting about terrorism, outsourcing and immigrants are weakly constructed, lacking any intelligent or factual basis, rife with discrepancies and simplistic language meant to mask the fact that he actually has no idea what he is talking about. To the ‘other’, including myself, he is not just a presidential candidate but an embodiment of everything that keeps us powerless and vulnerable. Trumpism mandates that we actively participate in our oppression, absorbing the externalized consequences. Those protected observe and superficially worry, yet silently condone while we walk this country and campus with nebulous trepidation. At any moment, someone may come along and pick an "other" out of today’s diverse United States. At any moment, at Martin’s grocery shopping, walking around the city or to class, someone may assert, “Hey. You don’t belong here. I want you gone from this place and this country. This is MY America.” It might be loudly, openly, with a vocal or physical violation: a shove or hateful word, inviting others to join in on the erasure of this now-spotlighted human. Or it might be quiet, invisible and unsuspecting, with a slight smirk and thumbs up gesture next to Trump’s name as a symbol of support.

### Khan

#### Free speech deflects attention from the injustices of capitalism – battles are fought over free speech, distracting from a structural critique – empirically shown.

**Khan:** Khan, Tariq [Contributor and Researcher, The Hampton Institute] “Masking Oppression as Free Speech: An Anarchist Take.” November 2015. RP

**In the present-day United States, a shallow idea of "free speech" is often wielded by the privileged as a way to direct attention away from critiques of existing conditions and systems; particularly critiques of capitalism, imperialism, white supremacy, and patriarchy. For example, two years ago when UC Berkeley students organized to keep comedian Bill Maher from speaking on their campus, leading media outlets framed it as a controversy about free speech rather than engaging with the much deeper critiques the students had about Maher's perpetuation of US imperialist, Orientalist discourse which fuels militarism abroad and racist violence at home. Yet, while students who protest imperialist discourse are characterized as a threat to free speech,** the actual threat to free speech in academia goes unchallenged **by leading media outlets.** October 8, 2015, at the Community College of Philadelphia, English professor Divya Nair spoke at a rally organized by students in protest of police recruiters on campus. The students and Professor Nair drew connections between colonialism and modern US policing; particularly the police tactic of recruiting poor people of color to act as the capitalist state's foot-soldiers to control poor Black and Brown communities. Later that day, school authorities suspended Professor Nair without pay, and they have since suspended three student group members who are facing disciplinary hearings. In the past few years there has been a noticeable campus crackdown on anti-colonialist expression.

#### The Aff’s focus on issues of PC culture and fighting hypersensitivity is complicit in capitalism and detracts resources from addressing larger problems [A2 Trigger Warning Aff/PC culture Aff and positions like that]

**Khan:** Khan, Tariq [Contributor and Researcher, The Hampton Institute] “Masking Oppression as Free Speech: An Anarchist Take.” November 2015. RP

**In the present-day United States, a shallow idea of "free speech" is often wielded by the privileged as a way to direct attention away from critiques of existing conditions and systems; particularly critiques of capitalism**, imperialism, white supremacy, and patriarchy. For example, two years ago when UC Berkeley students organized to keep comedian Bill Maher from speaking on their campus, leading media outlets framed it as a controversy about free speech rather than engaging with the much deeper critiques the students had about Maher's perpetuation of US imperialist, Orientalist discourse which fuels militarism abroad and racist violence at home. [1] Yet, while students who protest imperialist discourse are characterized as a threat to free speech, the actual threat to free speech in academia goes unchallenged by leading media outlets. [2]October 8, 2015, at the Community College of Philadelphia, English professor Divya Nair spoke at a rally organized by students in protest of police recruiters on campus. The students and Professor Nair drew connections between colonialism and modern US policing; particularly the police tactic of recruiting poor people of color to act as the capitalist state's foot-soldiers to control poor Black and Brown communities. Later that day, school authorities suspended Professor Nair without pay, and they have since suspended three student group members who are facing disciplinary hearings. In the past few years there has been a noticeable campus crackdown on anti-colonialist expression. Last year the American Indian Studies Program at the University of Illinois, Urbana-Champaign hired Professor Steven Salaita, known for his comparative studies of US settler colonialism in the Americas and Israeli settler colonialism in Palestine. Under pressure from wealthy donors, Israel lobby groups, and establishment politicians, the Chancellor and the Board of Trustees stepped in - against the wishes of the American Indian Studies Program - and "unhired" Salaita, citing the supposedly "uncivil" tweets he posted criticizing Israel's indiscriminate killing of civilians - including over 500 children - in Gaza last year. Several law-makers, Israel lobbyists, and campus authorities have likewise been working to silence the growing BDS (Boycott, Divestment, and Sanctions) movement against Israeli apartheid. Anti-colonialist students have also faced silencing and punishment. For example, earlier this semester at Cal State Sacramento, sophomore Chiitaanibah Johnson (Navajo/Maidu) was belittled and told by her professor that she was expelled from his US history course after she quite correctly challenged his assertion that the United States did not carry out genocidal anti-Indian policies. All of these cases and many other similar ones resonate with my own experience. Ten years ago, when I was an undergraduate at George Mason University, I was violently attacked by vigilantes and police for protesting military recruiters on campus. Right-wing students called me a "pussy" and a "faggot," and ripped the anti-militarist sign off of my chest. Vigilantes held me down to "assist" the officers in brutalizing and handcuffing me. When the police saw my foreign name, they decided I was a terrorist. One officer blamed me for 9-11. Another officer yelled at me, "You people are the most violent people in the world." An officer threatened to hang me upside-down from the ceiling in my jail cell for "running my mouth." Even though I was a student at the university, the police charged me with trespassing and disorderly conduct. At first, University officials defended the police's actions by saying I "was considered to be distributing literature." **In spite of the fact that the most egregious violations of free speech and academic freedom are committed in service to right-wing and establishment interests higher on the social hierarchy than students and professors, there is a highly problematic narrative proliferating in the United States; that today's college students are "oversensitive" or "too politically correct" and that this supposed oversensitivity is leading to a crackdown on free speech and academic freedom.** Both conservatives and liberals have perpetuated this false narrative. Conservative columnist George Will complained that the right of thin-skinned liberals "to never be annoyed" has become "a new campus entitlement." In a popular Vox article titled " I'm a Liberal Professor, and my Liberal Students Terrify Me," a college professor using the pseudonym Edward Schlosser complained about a climate of fear in academia caused by an overemphasis on the "safety and comfort" of students from historically marginalized groups. The September issue of The Atlantic featured the article " The Coddling of the American Mind," which argued that "A movement is arising, undirected and driven largely by students, to scrub campuses clean of words, ideas, and subjects that might cause discomfort or give offense." The piece lamented what a shame it is that students on some campuses led campaigns to disinvite former U.S. Secretary of State Condoleezza Rice and International Monetary Fund managing director Christine Lagarde from campus speaking engagements. **Its authors, Greg Lukianoff and Jonathan Haidt argued that instead of protesting such speakers, women and Black students should look up to Rice and Lagarde as role models. The irony of two white men condescendingly determining who women and people of color should look to as role models did not occur to the authors**. Shortly following the publication of the Atlantic article, President Obama echoed its sentiments at an education town hall in Des Moines. He said: "I've heard of some college campuses where they don't want to have a guest speaker who is too conservative, or they don't want to read a book if it had language that is offensive to African Americans or somehow sends a demeaning signal towards women. I've got to tell you, I don't agree...that when you become students at colleges, you have to be coddled and protected from different points of view." With this, Obama further reinforced the harmful notion that racist and misogynist speech is simply a "point of view" equal with all other "points of view," as well as the notion that "oversensitive" students are stifling free expression. **More recently, I was surprised to find in my alma mater's newspaper that Atlantic authors Lukianoff and Haidt were using the experience that I went through ten years ago to further the narrative that colleges are choosing "political correctness over freedom of expression."** "Oversensitivity" and "political correctness" had absolutely nothing to do with what happened to me. I immediately wrote a letter to the Fourth Estate, George Mason University's newspaper saying, in part: "Was Salaita targeted because he was not "politically correct?" Was he targeted for being "offensive?" Was the campaign against him triggered by students who are uncomfortable with controversy? The answer to all three questions is no. Plenty of professors at UIUC have used swear words on social media with no repercussions, it was not liberals with supposed hypersensitivity about political correctness who raised their eyebrows about Salaita, and it was the student activist Left - the people who are supposedly policing uncomfortable language, according to Lukianoff and Haidt - who most boldly came to Salaita's defense. The campaign against Salaita came not from below, but from above, from rich and powerful establishment interests. Was the repression against me at GMU ten years ago caused by a culture of hypersensitive "political correctness?" Again, no... The first people to come to my defense, and to the defense of free speech, were leftist students and professors, LGBT students, South Asian and Arab students, the very people who the right would have us believe are too "politically correct" to tolerate free speech. It was the local right wing, the people who complain that society is "offended" too easily - fascist groups such as Free Republic, which later merged with other similar groups to become the Tea Party movement - who reveled in my arrest and called for more repression of students like me." Likewise, Professor Divya Nair, the students at the Community College of Philadelphia, students such as Chiitaanibah Johnson at Cal State, and the student-led BDS movement are not being targeted for offending supposedly "PC" sensibilities. They are being targeted specifically for their anti-colonialist/anti- imperialist positions. In all of the hand-wringing in mainstream and conservative discourse about colleges violating principles of free expression, one looks in vain for any discussion of these kinds of examples. Indeed, the hand-wringers are more concerned that rich imperialist war-mongers such as Condoleeza Rice are being protested off of campuses than they are that actual students and professors are being threatened, suspended, expelled, fired, or are facing disciplinary hearings for criticizing the policies and worldview of people like Rice. Blaming something like Condoleeza Rice being disinvited from a speaking engagement on student "oversensitivity" and inability to hear uncomfortable speech misdirects public attention from the real anti- imperialist critique that student protestors have for why they don't want a war-monger propagandizing on their campus. To refer to such students as "afraid of controversy" is more than a stretch. Chiitaanibah Johnson, for example, charged the United States with genocide. The anti-police students in Philadelphia carried a banner calling for a "Pig Free CCP." Steven Salaita, who has been championed by the student Left was targeted by the establishment for statements such as "At this point, if Netanyahu appeared on TV with a necklace made from the teeth of Palestinian children, would anybody be surprised?" These are hardly what one can call the "PC" positions of coddled students. **The flawed notion that overly-sensitive "PC" students are shutting down free speech is harmful. Student initiatives on campuses to challenge things such as racial or gender micro-aggressions are not challenges to free speech and they are not based on the idea that micro-aggressions are "offensive." Micro-aggressions must be challenged because they are oppressive, not because they are offensive. Racist speech leads to an environment that is conducive to racist violence. It marginalizes students of color and makes the university not "uncomfortable," but unsafe**. Anti-LGBT speech makes campus unsafe, not merely "uncomfortable" for LGBT students. Misogynist speech creates an environment that is conducive to sexual assault. Any decent social scientist knows this**. It is not about people being "uncomfortable" or "offended." It is about people being unsafe and oppressed.** White frat boys would have us believe that they are being unfairly "silenced" because women and people of color don't laugh at their misogynistic or racist jokes, meanwhile anti-colonialist and anti-imperialist students and professors face actual repression from law-makers, wealthy donors, campus administrators, police, and vigilantes. The same foolish people who boycott stores for saying "Happy Holidays" instead of "Merry Lord Jesus God Almighty and the Bible Christmas!" complain that Black students fighting against actually-existing racial violence are "oversensitive." **The threat to campus free speech and academic freedom is not anti-racist or feminist students. The threat to free expression in academia is real, and it is coming down the social hierarchy from rich and powerful establishment interests, not upward from "coddled" students. The beautiful ideal of free expression is cheapened when oppression is allowed to go unchecked under the guise of a disingenuous notion of "free speech."**

### Fish

#### Academic freedom isn’t being violated in the status quo

**Fish:** Fish, Stanley [Davidson-Kahn Distinguished University Professor and Professor of Law at Florida International University; Floershimer Distinguished Visitin] “It’s Not About Free Speech or Academic Freedom.” *The Huffington Post.* November 2016. RP

**In the discussions of the events now taking place on an increasing number of college campuses the phrases “free speech” and “academic freedom” are routinely invoked**. Neither is an appropriate rubric for the analysis of what is happening. **In the incidents I have read about, no academic freedom issues are implicated at all. Academic freedom is the freedom of universities and their faculties to engage in their core tasks —the search for truth and the advancement of knowledge — free of interference from outside forces that wish to make the classroom or the research laboratory the vehicles of some preferred interest or ideology**. Academic freedom is violated when an instructor is told that she cannot assign a text because the ideas in it offend a legislator or a donor, or that she must assign a text because the company funding the course requires it. (Such things actually happen.) Academic freedom is violated when a university accepts a monetary gift on the condition that a particular professor be hired or not hired. Academic freedom is violated when personnel decisions — decisions to hire or promote — are made on the basis of a candidate’s political views rather than on the basis of his or her pedagogical and scholarly record. In these and related cases, an academic or an academic unit is being told, “You can’t do your job in the manner dictated by your professional judgment; instead you must do your job in a manner dictated by the preferences of some external constituency.” **Nothing like that is going on at Yale or the University of Missouri or any of the other places written about in the press. So why is the banner of academic freedom being unfurled? For two reasons, I think, both of them specious. First, some student protesters believe that their academic freedom rights are being violated when they are prevented from speaking out or chastised when they do speak out.** That one’s easy. **Students don’t have any academic freedom rights because students are engaged in the core academic tasks only as apprentices not as credentialed practitioners. Students are in the process of becoming persons whose views are to be respected by professional peers; they’re not there yet, and when the views they express are, in the judgment of an instructor, not to the point, there is no requirement — of academic freedom or anything else — that they be given a hearing**. Of course it might be pedagogically useful to allow students who are on the wrong path (again, as judged by the instructor) to go down it, but that is the teacher’s call and making it impinges on no rights students supposedly have.

#### Academic freedom isn’t free speech

**Fish:** Fish, Stanley [Davidson-Kahn Distinguished University Professor and Professor of Law at Florida International University; Floershimer Distinguished Visitin] “It’s Not About Free Speech or Academic Freedom.” *The Huffington Post.* November 2016. RP

**The second reason why the notion of academic freedom is being cited in a context where it does not belong is that students** (and some professors and almost all commentators) **make the mistake of thinking that academic freedom is a subset of free expression. In fact the two are largely distinct categories** (although a venn diagram might reveal some small areas of overlap). **Freedom of speech is a right citizens have against a government that would censor or silence or exclude their voices**; the idea is that in a democracy, as opposed to a dictatorship or a theocracy, all voices have an equal right to be heard and the state should not be in the business of picking and choosing the ones it likes or dislikes. **But that is not the case in the academy where the only voices that have a right to be heard are the voices vetted and deemed worthy by professional gatekeepers — departments, deans, provosts, editors of learned journals etc. Being silenced in the academy means that you haven’t made it,** not that some freedom of yours has been compromised. So my point holds: academic freedom plays no part in the controversies that have captivated the media.

### Boler

#### The First Amendment is rooted in racism, and free speech serves as a tool to legitimize violence onto minorities.

**Boler:** Boler, Megan [Professor, Virginia Tech University] “All Speech is Not Free: The Ethics of ‘Affirmative Action Pedagogy’”. *Philosophy of Education.* 2000. RP

On what basis might one justify an affirmative action pedagogy? The first justification is forwarded by legal scholars in the area of critical race theory. The authors of Words that Wound address the tension between the First and Fourteenth amendment. **The tension arises because, in fact all people are not equally protected under the law due to the institutionalized inequities within our society. This complicates the effectiveness of the First Amendment. Scholarship in critical race theory and educational analyses document that in recent years we find incidents of hate speech primarily to be directed at racial, religious, or sexual minorities. Not surprisingly, one finds in turn that invocations of the right to free speech are most often invocations to protect the right of the members of the dominant culture to express their hatred toward members of minority culture. These authors make important legal and historical cases to support their observation that, in practice, while the rhetoric of the First Amendment is a buzz word that makes all of us want to rally for its principle, in practice “the First Amendment arms conscious and unconscious racists — Nazis and liberals alike —** with a constitutional right to be racist. Racism is just another idea deserving of constitutional protection like all ideas.”4 Similarly, Judith Roof, a scholar from another discipline addresses class- room dynamics and argues that we must “read the appeal to the First Amendment as itself a kind of panic response in the same order as hate speech itself.” **A second justification for privileging marginalized voices is based on the measurement of the psychological effect of hate speech on targeted groups and individuals.** As one legal scholar explains, hate speech affects its victim in the visceral experience of a “disorienting powerlessness,” an effect achieved because hate speech is comparable to an act of violence.6 **In reaction to hate speech, the target commonly experiences a “state of semishock,” nausea, dizziness, and an inability to articulate a response**. This scholar gives an example of a student who is white and gay. The student reports that in an instance where he was called “faggot” he experienced all of the above symptoms. Yet when he was called “honky,” he did not experience the disorienting powerlessness. As the scholar remarks, “**the context of the power relationships in which the speech takes place, and the connection to violence must be considered as we decide how best to foster the freest and fullest dialogue within our communities.**” This brings me to another key point: the analysis of utterance in the classroom requires more than rational dialogue. In fact, the critical race theorists argue that because racism is irrational, no amount of rational dialogue will change racist attitudes. I disagree, in part because I am convinced that classroom discussion must recognize the emotions that shape and construct the meanings of our claims, our interchange with one another, and our investments in particular world-views. Thus a discussion of racism or homophobia cannot rely simply on rational exchange, but must delve into the deeply emotional investments and associations that surround perceptions of difference and ideologies. One is potentially faced with allowing one’s world-views to be shattered, in itself a profoundly emotionally charged experience.

### DuMont

#### Empirically, online platforms at colleges have been used for cyberbullying.

**DuMont:** DuMont, Susan [J.D., University of Maryland Francis King Carey School of Law, 2016; M.A., University of Delaware, 2010; B.A., Lake Forest College, 2007] “Campus Safety v. Freedom of Speech: An Evaluation of University Responses to Problematic Speech on Anonymous Social Media.” *Journal of Business and Technology Law.* Volume 11. 2016. RP

Despite statements that indicate positive intentions, **Yik Yak and similar platforms have created additional spaces for anonymous hate speech, sexual harassment, violent threats, and suicidal statements by students. For example, in the spring of 2015 at Syracuse University, posts on Yik Yak complained about a step show, a historically black performance art, and called the participants “monkeys,” a racial slur**. In November of 2015, University of Missouri students responded to a protest by black students against racism on campus by making overtly racists statements on Yik Yak.24 Anonymous sites like Yik Yak have also been platforms for sexual harassment of students and faculty.25 **At Eastern Michigan University, students posted dozens of demeaning, crude, and sexually explicit statements on Yik Yak about their female professor during a course, which caused the faculty member to state she had been “defamed . . . sexually harassed and verbally abused**.”26 Campuses have also experienced threats of mass violence on Yik Yak and similar sites. At Kenyon College in Ohio, a poster proposed a gang rape at the campus’s women’s center,27 and students involved in a feminist student organization at the University of Mary Washington experienced more than 700 posts threatening rape and violence against them before a leader of the group was actually murdered.28 In the spring of 2015, a Johns Hopkins Student posted on an anonymous chat website, Greekrank.com, about her suicidal intentions following sorority recruitment.29 **These examples illustrate the types of anonymous social media postings college communities are experiencing, and the need for universities to develop appropriate, legally sound response strategies.**

#### Sitting back and doing nothing is complicit in violence online – independent of solvency, this has a powerful signaling effect and is key to educate people.

**DuMont:** DuMont, Susan [J.D., University of Maryland Francis King Carey School of Law, 2016; M.A., University of Delaware, 2010; B.A., Lake Forest College, 2007] “Campus Safety v. Freedom of Speech: An Evaluation of University Responses to Problematic Speech on Anonymous Social Media.” *Journal of Business and Technology Law.* Volume 11. 2016. RP

**Most universities are currently ignoring the content on anonymous social media sites, including when posts are brought to their attention, because staff and administrators view monitoring or responding to these sites as outside of the bounds of their campus roles**. This option will certainly not infringe on freedom of speech rights as it does not attempt to limit or respond to any content. Additionally, not responding to this speech is closely aligned with the ideal of higher education as a safe haven for free expression in order to support a “central mission . . . to nurture and preserve a learning environment that is characterized by competing ideas, openly discussed and debated.” **However, by ignoring these sites, universities may fail to fulfill their duty to students regarding campus safety and will likely fail to fulfill their duties under Title IX and Title VI**, as well as fail to respond to self-harm statements. By ignoring Yik Yak and related sites, universities may fail to satisfy their duties related to physical campus safety. A number of campuses have experienced threats of mass violence on anonymous sites.106 Under the Clery Act, credible threats to campus safety require universities to notify students of the danger. Failure to respond to threats posted on Yik Yak may violate the Clery Act if the threats are deemed credible and the school fails to fulfill its duty to warn. Campuses have also experienced specific threats of targeted violence against students. For example, Grace Rebecca Mann, a student and campus leader of Feminists United at the University of Mary Washington, was killed in April of 2015. She and other members of her student organization had been the subject of violent threats on Yik Yak, including a number that threatened to rape or kill members of the group. University President Richard Hurley received harsh criticism based on the University’s failure to prevent Mann’s death, despite repeated reports by Mann and other members of the group that they felt unsafe. This failure to prevent Mann’s death in the face of ongoing threats may constitute a breach of the assumed duty of care. Further, by ignoring sexual harassment on these sites, universities may fail to fulfill federally imposed duties under Title IX. Mann’s murder at Mary Washington further illustrates the room for allegations of fault that universities face under Title IX, should they choose to ignore sexual harassment on Yik Yak. Mann and other members of her student organization believe they were targeted specifically based on their gender, and their feminist activism related to sexual assault prevention and campus groups. Following Mann’s death, Feminists United filed a federal complaint with the U.S. Department of Education alleging that the women were subjected to “sex-based cyber assaults” and that Mary Washington failed to adequately respond to the threats made against the students. Similarly, by ignoring hate speech on these sites, universities may fail to fulfill their duties under Title VI. A single offensive statement alone, such as the one made at Syracuse using the term “monkeys” to refer to participants in the university step show,114 is unlikely to trigger any duties under Title VI. On the other hand, statements that are sufficiently pervasive or severe so as to interfere with a student’s ability to access and benefit campus programs rise to the level of actionable discrimination under Title VI and universities must respond. The numerous racially motivated posts on Yik Yak that occurred at the University of Missouri during campus protests regarding race and inclusion illustrate the type of speech that could rise to this level. Although suicide does not on its face affect campus safety in the way that mass violence or harassment can, it is a serious campus health and safety concern. **At a minimum, universities miss an opportunity to proactively respond to mental health crises, and at the extreme end, may create liability in failing to adequately respond to suicide threats. Approximately 1,100 college students die annually from suicide, making it the second leading cause of death among college students, and therefore an important issue for university administrators. By choosing to ignore statements made on Yik Yak and similar sites, universities are missing the opportunity to engage with students on mental health and self-harm where students are having these conversations.** On the other end of the spectrum, if a student discloses an intent to commit suicide on these platforms in such a way that a university had knowledge or should have had knowledge about the intention, the institution may find themselves liable under the increasing scope of the special relationship as it is believed to have been expanded following Elizabeth Shin’s suicide. Finally, by ignoring the problematic speech on these sites, universities are failing to recognize the significant impact that the internet has on students and their learning environment. In her book Hate Crimes in Cyberspace, Danielle Keats Citron, a Professor of Law at the University of Maryland Francis King Carey School of Law and legal expert in online harassment, identifies the significant impact the internet has on day-to-day life offline. University administrators may believe the mistaken cultural perception that online harassment will have less impact than in- person harassment, and that there should be less regulation of the internet than in- person interactions. **However, online harassment is just as significant, can travel more widely at a more rapid rate, and can follow a student into the future more easily than in-person harassment.** Today’s higher education community is intimately connected to social media and educational internet sites such as Blackboard, OrgSync, and other platforms. If universities respond to harassing speech by encouraging victims to reduce their use of the internet, it may inadvertently impact students’ ability to fully engage in the educational environment.

#### Counterplan text

**DuMont:** DuMont, Susan [J.D., University of Maryland Francis King Carey School of Law, 2016; M.A., University of Delaware, 2010; B.A., Lake Forest College, 2007] “Campus Safety v. Freedom of Speech: An Evaluation of University Responses to Problematic Speech on Anonymous Social Media.” *Journal of Business and Technology Law.* Volume 11. 2016. RP

**For university administrators, problematic, anonymous, internet-based speech may appear to be an unsolvable problem that pits free speech against campus safety and includes complex investigatory challenges. However, rather than choose to ignore or ban platforms such as Yik Yak, university administrators should develop a strategy for how to respond to anonymous, internet-based problematic speech that affects the campus. Universities should recognize the harm these types of speech can cause and should rely on case law and governmental guidance on related topics to develop a multifaceted approach to this problem, including prevention efforts, reporting structures, and investigations into conduct that violates campus policies, regardless of the medium on which it takes place**. By doing so, universities can better provide a safe learning environment, while also protecting student rights.

### Sleeper – The Conservatives Behind the Free Speech Crusade

#### FIRE is a conservative organization that supports free speech when convenient – it condemns protesters it disagrees with as a way of instilling conservative values.

**Sleeper:** Sleeper, Jim [Lecturer in Political Science, Yale University] “The Conservatives Behind the Campus ‘Free Speech’ Crusade.” The American Prospect. October 2016. RP

**Last month, I**[**disclosed**](http://www.alternet.org/education/what-campus-free-speech-crusade-wont-say-0)**the conservative-movement funding, premises, strategy, and practices of the Foundation for Individual Rights in Education (FIRE), which purports to protect “free speech” on college campuses, but expends more energy blaming—and chilling—“politically correct” activists and administrators**. I also [argued](http://www.nytimes.com/2016/09/04/opinion/sunday/political-correctness-and-its-real-enemies.html?action=click&pgtype=Homepage&clickSource=story-heading&module=opinion-c-col-right-region%C2%AEion=opinion-c-col-right-region&WT.nav=opinion-c-col-right-region), in The New York Times, that “free speech is alive and well on campus,” and that demands for “safe spaces,” “trigger warnings,” and speaker cancellations, while real and sometimes chilling, are far less prevalent and dangerous than FIRE insists. Such offenses often prompt not intimidation and silence but more speech, including criticism from liberals. Now a thorough, mostly well-balanced [report](https://pen.org/on-campus) by the PEN (Poets, Essayists, and Novelists) American Center confirms that the conservative “free speech” crusade has gone too far. On October 20 at a Bard College [conference](http://www.bard.edu/news/events/event/index.php?eid=129972), PEN executive director Suzanne Nossel will have an opportunity to question FIRE President Greg Lukianoff, the crusade’s most prominent national leader, about that overreaching. There are several questions that I hope Nossel and another panelist, Angus Johnston, will ask Lukianoff. But first, some context. The Times’ Jennifer Schuessler reported last weekend that although “[t]he conventional wisdom surrounding American college life these days views campuses as hotbeds of intolerance for free speech,” the PEN report “questions that story line while warning of a different danger: a growing perception among young people that cries of ‘free speech’ are too often used as a cudgel against them.” **In other words, one thing threatening freedom of expression on campus is the “free speech” crusade itself**. That’s not as Orwellian as it may sound. Not surprisingly, FIRE is trying to put [the best face it can](https://www.thefire.org/pen-america-issues-report-on-campus-speech/) on the PEN report, which stops short of blaming the conservative group for wielding the cudgel, and even credits the organization with calling attention to threats against free speech. The report calls the organization “libertarian” but, confusingly, notes elsewhere in the text that the “FIRE is often regarded as libertarian or conservative and is viewed suspiciously by some liberal or progressive students and faculty.” “Suspiciously?” **As I demonstrate in “**[**What the Campus ‘Free Speech’ Crusade Won’t Say**](http://www.alternet.org/education/what-campus-free-speech-crusade-wont-say-0)**,” FIRE’s funding, board members, and closest associations are heavily right wing. Its major grants come from the ultra-conservative Earhart, John Templeton, and Lynde and Harry Bradley Foundations; the Scaife family foundations; the Koch-linked**[**Donors Trust**](http://www.motherjones.com/politics/2013/02/donors-trust-donor-capital-fund-dark-money-koch-bradley-devos)**, and funders that sustain a myriad of conservative campus-targeting organizations that include FIRE, the Intercollegiate Studies Institute, the David Horowitz Freedom Center (whose “Academic Bill of Rights” would mandate more hiring of conservative faculty and would monitor professors’ syllabi for “balance”) and Campus Watch (which tracks and condemns liberal professors’ comments on the Middle East).** All of these organizations stoke public anger against “political correctness” as a threat to academic freedom and to the free-market economy, which they insist would enhance it. Never mind that, as FIRE keeps discovering—but never invites us to ponder—the college trustees and deans whom it condemns rightly enough for restricting speech are serving not politically correct pieties, but market pressures to satisfy student “customers” and avoid negative publicity, liability, and losses in “brand” or “market share.” **FIRE can’t acknowledge that the more market-driven a university, the more restrictive it—like any business corporation—is of individual rights in education**. Lukianoff should be asked to acknowledge this at the Bard conference. **Lukianoff’s boards of directors and advisers include such prominent “free-market” conservatives as George Will and T. Kenneth Cribb, who was assistant for domestic affairs to President Ronald Reagan and a former president of the conservative Intercollegiate Studies Institute, which trains students to counter “liberal” threats to the “market economy.”** Roger Kimball, the thundering author of Tenured Radicals and “Taking Back the University—A Battle Plan” and a board member of the Sarah Scaife Foundation, one of FIRE’s big funders, also chairs the William F. Buckley Program at Yale, which invited Lukianoff to campus last fall. There he shot the infamous video of an overwrought black 20-year-old shrieking at a professor, and also “triggered” (if I may) an angry demonstration against the Buckley program itself. Even Lukianoff’s Unlearning Liberty: Campus Censorship and the End of American Debate, was published in 2014 by the right-wing Encounter Books, which also publishes such conservative mainstays as Kimball and William Kristol, and which has been funded with at least $6 million by the Bradley Foundation. Lukianoff, a First Amendment lawyer who left the ACLU to head FIRE, claims that he’s a liberal Democrat, but his work depends on the conservative grant makers, board members, and associations mentioned above. What are his equivalent ties and obligations to progressives, whose freedoms he also claims to defend?   The PEN report’s failure to note all this is perhaps its only major failing. And, tomorrow, PEN Executive Director Nossel will have an opportunity to make up for it by asking Lukianoff directly why FIRE highlights and occasionally even provokes “politically correct” threats to freedom of speech, as I watched it do at Yale, and why it seldom if ever mentions the many conservative “politically correct” pressures on students and teachers that I [described](http://www.alternet.org/tea-party-and-right/why-bashing-politically-correct-campuses-hurting-conservatism) in “Why Bashing ‘Politically Correct’ Campuses is Hurting Conservatism.”   FIRE is justified, up to a point, in criticizing black protesters who shout down and intimidate classmates and professors by branding their colleges as racist, and in challenging feminist government and university bureaucrats who impose unfair standards and procedures when judging sexual-assault charges.And the PEN report is justified in saying that “while free speech is alive and well on campus,”—a conclusion that echoes my own observations—it is “not free from threats and must be vigilantly guarded if its continued strength is to be assured.” **FIRE itself poses one of those threats when it waves its** “free speech” banner in virtual lockstep with a broader conservative class **and culture war against the democratic rights it purports to protect. Here things turn Orwellian, indeed:** As I’ve mentioned, the same foundations that fund FIRE’s pretensions at championing campus free speech also fund David Horowitz’s speech-chilling “Academic Bill of Rights,” for which Lukianoff’s predecessor at FIRE, David French, testified favorably before the Pennsylvania legislature. The same foundations also fund a campaign pretending to champion voting rights by passing voter ID laws that would actually disenfranchise voters, including many college students. (One of FIRE’s biggest funders, the Bradley Foundation, even paid for billboards in black neighborhoods that depicted a black man behind bars and the words, “Voting Fraud is Felony,” a not-so-veiled example of voter intimidation.) **The same foundations also support—and FIRE has applauded—the duplicitously-named Citizens United ruling that, in the name of expanding free speech, opens election campaigns, and therefore public deliberation about how to regulate corporations, to business-corporate fiduciaries of incorporeal whorls of shareholders, who cannot really deliberate about anything but the size of their dividends**. Labor unions, too, can now fund election campaigns, but once again, that’s little more than protective coloration for a ruling that lets wealthy corporations buy expensive megaphones to elect legislators who’ll impoverish and break more unions under so-called “right-to-work” laws. Confronted with this picture, Lukianoff will undoubtedly accuse a questioner of assigning guilt by association, and cite FIRE’s occasional departures from the conservative line. But it’s awfully hard not to connect the dots between FIRE and the conservative funders and organizations engaged in a broad assault on any and all Americans who challenge their “free-market” doctrines. Those doctrines have themselves become dangerous to democracy via casino-style financing (Donald Trump, anyone?), predatory lending, and ever-more intrusive, degrading consumer marketing. The PEN report misses this broader context, conscientious though it is in distinguishing real threats to campus free speech from hyped and imagined ones. It’s also hard to accept at face value Lukianoff’s claim that FIRE takes on so many liberals only because most professors and students are liberals, and are therefore behind most campus constraints on free speech. In truth, as I [have argued](http://www.alternet.org/tea-party-and-right/why-bashing-politically-correct-campuses-hurting-conservatism), conservative political correctness doesn’t need to shout as loudly as its “progressive” variant only because it’s already baked into every Economics 101 course and into the premises and protocols of career advancement that the larger society foists on undergraduates. Pushers of these protocols insist that “free markets make free men,” as the old saying had it, and Lukianoff travels the country touting “the marketplace of ideas” on campus after campus. But the ebb and flow of ideas can’t be reduced to market exchanges, and has to transcend them. Today, “free market” globalization is undermining the individual rights, civic virtues, and republican sovereignty that conservatives claim to cherish. No wonder they’re looking to scapegoat frightened students and deans. Let’s hope that Bard conference-goers will have read [the](http://pen.org/on-campus)[PEN report](https://pen.org/on-campus), [the Times account of it](http://www.nytimes.com/2016/10/17/arts/pen-warns-that-college-students-often-see-free-speech-as-a-cudgel.html?_r=0), and my own analysis of “[What the Campus ‘Free Speech’ Crusade Won’t Say](http://www.alternet.org/education/what-campus-free-speech-crusade-wont-say-0).” And let’s hope that they’ll ask Lukianoff to explain his funding, premises, and the pattern and practice of his propaganda and provocations and omissions, which surround and often undermine his group’s legitimate complaints. I’ve sent these questions to FIRE myself, three times, but have never received an answer. Maybe the Bard conferees will have better luck.

### Sleeper – What the Campus Free Speech Crusade Won’t Say

#### Free speech advocates, such as FIRE and Lukianoff, empirically stir up controversy and undermine rights on campus

**Sleeper:** Sleeper, Jim [Lecturer in Political Science, Yale University] “What the Campus 'Free Speech' Crusade Won't Say.” Alternet. September 2016. RP

**It was then that one of the students, a roughly 20-year-old black woman, flushed with the anguish and excitement of the campus upheavals, instantiated anyone’s fantasy of a “cry-bully” by hurling imprecations into Christakis’s face, accusing him of failing “to create a place of comfort and home” and, in practically the same breath, shouting, “Who the f\*\*k hired you?” Video-cam at the ready, Lukianoff caught the outburst, which was posted quickly by Tucker Carlson’s conservative “The Daily Caller” website under a headline, "Meet the Privileged Yale Student Who Shrieked at Her Professor," with photos of her and her parents' suburban Connecticut home and a note about its $700,000-plus assessed value**. Needless to say, the video went viral, bringing the student death threats that drove her to seek police protection and go into hiding. **The conservative free-speech campaign has drawn many other prurient scourges of the decadent young to prowl campuses seeking the thrill of sighting a specimen of the enemy who has become so vivid, so haunting, in their imaginations. Chasing the specter, they can forget about the Iraq war, the 2008 financial meltdown, the mass killings, the road rage, the gladitorialization of sports, the degrading, ever-more intrusive marketing, and Donald Trump’s stampede through conventional herds of sacred political cows, all of these horrors discrediting the neo-liberal paradigm within which the hunters have lived and moved and had their beings. Finally, they can find a target**. Given its First Amendment absolutism, FIRE’s engagement with Yale was even more ironic, because no government official, university administrator, faculty committee, or, as far as I know, individual faculty member ever threatened or effectively chilled the Christakises’ or anyone else’s opportunity to speak and teach freely. **The only “threats” that the FIRE could cite—and did cite loudly and vividly enough to provoke more of them—came from the angry black students who posted their demands on Salovey’s door and confronted Nicholas Christakis in the courtyard. But should it really be so hard for Lukianoff and Johnston to imagine that a young black woman undergraduate, seeing an upsurge of racist violence and racist disenfranchisement tactics off campus, might cry out for the refuge, caring, and resources to reckon with injustice that her college’s own marketing promised her?** Of course, she shouldn’t be coddled but challenged to reconcile her overwrought perceptions with complex realities. But if any of her critics could pause to imagine how he might feel as a white student in a 93% non-white student body, on a campus most of whose custodial and dining hall staff were white and where most street crimes near campus were committed by whites, mightn’t he assess a few black students’ histrionic student reactions with a little more nuance and, frankly, a little more heart? Instead, the calculated, viral distribution of the video of a confused and belligerent student made it hard to avoid the impression that a sick system is eating its young. **Like Captain Renault in the movie Casablanca, the “free speech” campaign wants us to be “shocked, shocked” that some students are as intemperate as the Republican presidential nominee and that some colleges accommodate them. If Lukianoff’s video was meant to correct the politically correct, it had the contradictory effect of chilling the freedoms of expression that the FIRE and Scott Johnston claim to defend even in highly offensive speech.** (“You do realize that you don't have the right not to be offended, right?”, Johnston had said to the Native American students. And Erika Christakis, in her open letter on Halloween costumes, had asked, “Is there no room anymore for a child or young person to be a little bit obnoxious... a little bit inappropriate or provocative or, yes, offensive? American universities were once a safe space not only for maturation but also for a certain regressive, or even transgressive, experience; increasingly, it seems, they have become places of censure and prohibition.”) **No, universities haven’t become places of censure and prohibition, at least not before Lukianoff took out his video-cam and used his own rights to shut down someone else’s, a good example of what the conservative “free speech” campaign is doing**. That video and the angry Native American students were enough to make Johnston, like alumni of other colleges that have had similar demonstrations, some led by black and Latino students, decide to stop funding what they see as coddled undergraduates and weak-kneed administrators.



#### Free speech is just used to keep conservatives happy

**Sleeper:** Sleeper, Jim [Lecturer in Political Science, Yale University] “What the Campus 'Free Speech' Crusade Won't Say.” Alternet. September 2016. RP

Again, though, universities are among the few places where “founding principles” are discussed often and rigorously enough to show that, in practice, some principles subvert others. For example, **Lukianoff speaks often and everywhere of reinvigorating "the marketplace of ideas," but ideas in a university (and a healthy democracy) emerge from a culture of open inquiry and expression based in mutual respect, not market exchange values. “You can't build a clear conservatism out of capitalism, because capitalism disrupts culture**," said Sam Tanenhaus, biographer of the American conservative icon Whittaker Chambers, now writing a biography of William F. Buckley, Jr., in a lecture in 2007 at the conservative American Enterprise Institute.¶ **Tanenhaus’ observation about the tension between today’s capitalism and democratic or republican culture is anathema to the ultra-conservative Lynde and Harry Bradley Foundation, the Scaife Family foundations, the Earhart, John Templeton, Koch-Brothers’ DonorsTrust (a conduit for donors for grants not made under their own names), and other foundations that sustain conservative think tanks like the AEI and a myriad of campus-targeting organizations—including FIRE, the Intercollegiate Studies Institute, The David Horowitz Freedom Center (whose “Academic Bill of Rights” would mandate more hiring of conservative faculty and would monitor professors’ syllabi for “balance”) and Campus Watch (which tracks and condemns liberal professors’ comments on the Middle East). These organizations stoke public anger against political correctness as a threat to academic freedom and to the free market economy that they keep insisting enhances it.¶ Their “free speech” campaign is really a culture war and a class war carried out on several fronts by a much larger network of organizations that are also funded by the very same foundations. The phrase “right wing” is thrown around so often that** I was surprised to learn just how “right-wing” the funders of the FIRE **and the other groups really are.**

### Goldberg

#### The most pragmatic approach to speech is judicial balancing – protecting speech sometimes but not when it trades off with more fundamental rights. [also probably a TJF for util]

**Goldberg:** Goldberg, Erica [Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 2016).] “FREE SPEECH CONSEQUENTIALISM.” *Columbia Law Review.* Volume 116. 2016. RP

But that is not always possible. **A jurisprudence that never engaged in balancing would be absolutist in ways that both overprotect and underprotect speech. Some kind of consideration of speech harms and benefits to determine which speech is constitutionally protected—what this Article terms “free speech consequentialism” —is unavoidable at some point in the First Amendment analysis. Even if courts look first to purposivist or rights-based considerations, courts inevitably confront their views about the value of the speech at issue in relation to the harms it causes**, often in light of their theories about the instrumental goals of the First Amendment.

#### Absolutionist approaches to free speech aren’t pragmatic – they trade off with other rights and ignore these consequences

**Goldberg:** Goldberg, Erica [Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 2016).] “FREE SPEECH CONSEQUENTIALISM.” *Columbia Law Review.* Volume 116. 2016. RP

This Article argues that courts should constrain free speech consequentialism by considering only the speech harms that are sufficiently similar to conduct harms when evaluating the harms caused by speech. **Speech harms typically have unique properties, such as being context dependent and caused by diffuse parties, but some harms caused by speech resemble the more direct and immediate harms arising in paradigmatic cases of conduct**. Analogizing speech harms to conduct harms would allow courts to protect individuals from the more tangible harms caused by speech while preserving the specialness of speech’s virtues. After describing and justifying this constrained approach to free speech consequentialism, this Article then applies the proposal to analyze timely and difficult free speech issues. **Strong free speech protections come at the expense of many types of speech-related harms, including emotional distress, privacy intrusions, reputational damage, and violence provoked in audiences**. A recent wave of scholarship argues for more explicit and more heavy-handed forms of free speech consequentialism to remedy these harms. **Scholars have begun to criticize free speech jurisprudence for being dismissive of harm, and for not properly distinguishing the different mechanisms by which speech causes harm. Although the First Amendment currently occupies a vaunted position in our legal and cultural practices, scholars have begun to use arguments sounding in consequentialism to chip away at the rules-based First Amendment regime.**

#### Rule util goes neg – free speech is NOT absolute.

**Goldberg:** Goldberg, Erica [Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 2016).] “FREE SPEECH CONSEQUENTIALISM.” *Columbia Law Review.* Volume 116. 2016. RP

**Scholars who espouse explicitly consequentialist theories of the First Amendment believe that free speech’s value lies in advancing particular ends, such as truth or democratic self-government. These free speech consequentialists argue that speech can and should be suppressed when a given instance of speech actually works against those ends, or, more generally, when the benefits of that speech are outweighed by other harms. These scholars advocate for a variety of approaches to balancing speech rights against other interests and may have expansive or limited conceptions of which speech should be protected, but they share the view that speech is valuable to the extent it achieves particular ends. In recent years, based in part on technological advancements that facilitate speech harm, scholars have argued for the regulation of revenge porn, cyberbullying and internet harassment, and the disclosure of true details about people’s identities or locations, based on the perceived minimal benefits associated with these kinds of speech as compared to the substantial harms such speech generates**. Scholars often advocate for speech regulations to occur through tort law, which allows private values to be weighed against First Amendment concerns.

#### Even if free speech is generally good, it shouldn’t be absolute – it trades off with other, more important rights [answers weird phil Affs/could be a framework arg for why tradeoffs are inevitable]

**Goldberg:** Goldberg, Erica [Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 2016).] “FREE SPEECH CONSEQUENTIALISM.” *Columbia Law Review.* Volume 116. 2016. RP

**Even scholars who favor what they deem nonconsequentialist theories of free speech, and who believe, for example, that free speech has inherent value and is a right of autonomous moral agents, will in some circum stances balance these values against the harms speech causes. This balancing would occur for so-called nonconsequentialists either in defining what constitutes speech, in determining which cate gories of speech are protected, or in evaluating whether speech that is protected can nonetheless be prohibited because its harms greatly outweigh its virtues. 17 Some scholars would argue that free speech rights are balanced not against harms but against other rights, such as the right to privacy, property, or reputation.** However, unless one of the rights at issue is defined absolutely, resolving this conflict would also require considera tion of the harms at issue and the value of the speech. Thus, the question becomes not whether free speech consequentialism is appropriate, but how harms caused by speech should be accounted for in First Amendment jurisprudence.

#### Equal distribution of rights means you negate – the harms of hate speech disproportionately accrue to certain groups, so absolute free speech is bad.

**Goldberg:** Goldberg, Erica [Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 2016).] “FREE SPEECH CONSEQUENTIALISM.” *Columbia Law Review.* Volume 116. 2016. RP

**Many scholars who advance these consequentialist arguments focus not only on maximizing welfare, but on distributional concerns. Schauer notes the distributional concern that the costs of speech are “rarely borne equally, or even fairly” throughout the population**. 81 Scholars like Danielle Citron and Mary Anne Franks argue that **harms from speech that disproportionately befall women are more likely to be minimized, compounding the problem of distributional inequity of speech harms. Concerns with the distribution of harms or concepts like fairness could be considered deontological, not consequentialist, values.** 83 However, consequentialism as a moral philosophy focuses on distribution as part of overall outcome, with the needs of the disadvantaged sometimes adding more to total welfare due to diminishing marginal returns on welfare. 84 Plus, most scholars concerned with fairness still resort to weighing speech harms to particularly vulnerable populations against their benefits when arguing in favor of greater regulation of speech. **If courts followed the lead of scholars and began to seriously evaluate empirical evidence of the harms of speech and devalue its benefits, America’s exceptional commitment to strong free speech protections would be greatly undermined**. There is a greater chance for courts, based on their own subjective views or ideological priors, to decide that certain speech, even core speech, is too harmful to be tolerated. **Perhaps the only principled way to deal with speech harms is to minimize them,** assume that individuals can largely manage them (in contrast to harms caused by conduct), and believe that the marketplace of ideas remedies them.

#### Discussion of the First Amendment mandates a non-consequentialist lens

**Goldberg:** Goldberg, Erica [Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 2016).] “FREE SPEECH CONSEQUENTIALISM.” *Columbia Law Review.* Volume 116. 2016. RP

1. The First Amendment Establishes a Preference for Speech, Using a Process-Based Definition of Speech. **— The very existence of the First Amendment establishes a preference for speech, defined based on the specialness of speech and perhaps largely independent of its consequences**. Both the text of the First Amendment and social and judicial consensus at an abstract level (or at a constitutional “focal point”) support treating speech harms as less susceptible to regulation. Indeed, the First Amendment may eschew free speech consequentialism, especially at the retail level. As the Supreme Court noted in United States v. Stevens, “the First Amendment itself reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs. **Our Constitution forecloses any attempt to revise that judgment simply on the basis that some speech is not worth** **it**.” 204 This proposal is consistent with the First Amendment’s preference for speech because it places harms that flow particularly from speech or those that are intertwined with the specialness of speech beyond regulation. **The text of the First Amendment, as compared to other amend ments, does not invite harms balancing. Consider the language of the Second Amendment, which provides that “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” 205 This Amendment is phrased in consequentialist terms, connecting the right to bear arms to the importance of the security of a free state. The First Amendment, by contrast, provides that “Congress shall make no law . . . abridging the freedom of speech, or of the press**.” 206 This text also stands in stark contrast to the Fourth Amendment, which prohibits only “unreasonable searches and seizures,” 207 inviting a weighing to determine what is unreasonable.

#### Court precedent proves that revenge porn is constitutionally protected.

**Goldberg:** Goldberg, Erica [Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 2016).] “FREE SPEECH CONSEQUENTIALISM.” *Columbia Law Review.* Volume 116. 2016. RP

**The regulation of revenge porn presents thorny First Amendment issues**, even though the speech is considered both highly injurious and of low value. **Some argue that revenge porn can be regulated as obscenity, but, like much pornography, sexually explicit speech that does not rise to the level of obscenity is still protected speech**. Criminal statutes and torts based on the invasion of privacy and emotional distress caused by revenge porn compromise the freedom to distribute protected speech lawfully obtained. Indeed, the Supreme Court has recognized a right for the media to publish even unlawfully obtained content, so long as the publisher was not involved in the illegal so long as the publisher was not involved in the illegal conduct that produced the content. **And in United States v. Stevens, the Supreme Court held that individuals cannot be held criminally liable for distributing speech depicting illegal acts, so long as the individuals did not perpetrate the underlying act**. Revenge porn, as defined here, is both legally obtained and depicts a legal act. In the ultimate articulation of free speech consequentialism, Mary Anne Franks argues for criminalization of revenge porn because “some expressions [of free speech] are just considered so socially harmful and don’t contribute any benefits to society.” **Yet this does not separate revenge porn from any number of categories of protected speech that may cause others emotional distress and are considered by some to possess little value**; this is nothing more than a call for judges to make whole sale and retail judgments about the value and harms that flow from particular forms of speech. If revenge porn can be regulated, legislators should not target the victim’s emotional distress or the invasion of privacy, as these focal points threaten to undermine strong free speech protections exceptional to America’s free speech regime. **Privacy cannot be a focal point for regulating revenge porn because America’s conception of privacy distinguishes between governmental intrusions on privacy and individual intrusions on privacy. The regulation of individual intrusions on privacy generally must yield to First Amendment concerns. This favoritism of free speech over privacy is what separates America from other Western democracies**. The United States allows individuals wide latitude to publish truthful (yet embarrassing or accusatory) information about each other and preserves spaces of autonomy as against the government far more than against other individuals. The European Union’s “right to be forgotten,” which allows individuals to sue to have embarrassing articles removed from search engines, could never exist in America. America’s approach allows individuals choices as to how they conduct their private inter actions with others, separate from the reach of the government.

### Lukianoff

#### Possible PIC????? Restrict free speech when it infringes upon other types of free speech

**Lukianoff:** Lukianoff, Greg [Free Speech Advocate and Leader, FIRE] “Campus Free Speech Has Been in Trouble for a Long Time.” *FIRE.* January 2016. RP

**In my 15 years at FIRE, students have historically been the most reliably pro-free-speech constituency on campus.** Students often showed more common sense than the professoriate, and certainly much more than the administrators. **But when stories about campus race-related protests inundated the news in the fall of 2015, I knew something had changed. It began when students at Wesleyan University demanded that the school’s primary student newspaper be defunded after it published a student op-ed that was critical of the Black Lives Matter movement**. Shortly after, Wesleyan’s student govern- ment unanimously approved a resolution that will tentatively cut the pa- per’s printing budget by half. **Things escalated when I saw firsthand that Yale students were demanding the resignations of two faculty members for sending out an email that ques- tioned whether universities should tell students what they should or shouldn’t wear as Halloween costumes. Then, just days later, student protests at the University of Missouri soured when protesters manhandled a student journalist**. These protests put First Amendment defenders and free speech advocates like me in a somewhat difficult position. **Of course, I’m supportive of stu- dents exercising their free speech rights. Indeed, I find it refreshing that students have overcome their oft-diagnosed apathy towards serious social issues. However, it’s distressing that many of the protesters are using their free speech to demand limitations on others’ free speech. The irony of these demands was particularly prominent at the University of Missouri, where FIRE recently helped pass a state law making it illegal to limit free speech activities on public university campuses to tiny zones. This new law helped make the Mizzou students’ protests possible. But in a twist, the protesters created their own free speech exclusion zone to prevent media from cover- ing the protest**. Now student protestors at at least 75 American colleges and universities have released lists of demands “to end systemic and structural racism on campus.” **Although this is a laudable goal, a troubling number of these de- mands would prohibit or chill campus speech.**

### Robertson

#### There is uniqueness – tons of states have laws on the book which ban revenge porn

**Robertson:** Robertson, Hope [Guest Contributor, Campbell Law Observer] “The Criminalization of Revenge Porn.” *Campbell Law Review.* July 2015. RP

**As of July 16, 2015, twenty-four states have laws addressing criminal charges against Revenge Porn posters and website hosts**. Some are broader than others, and most leave gaping holes for technicalities. **The current statutes vary on what categories legislators decided to categorize them under—everything from harassment and stalking to voyeurism and invasion of privacy**. Also, the anonymity allowed to those who post on these websites makes it almost impossible to prosecute, and website hosts are often hard to find.

#### Legal approaches to revenge porn are effective – sanctions are key to deter

**Robertson:** Robertson, Hope [Guest Contributor, Campbell Law Observer] “The Criminalization of Revenge Porn.” *Campbell Law Review.* July 2015. RP

With the advancement of the Internet and continued heightened sexualization of younger generations, **Revenge Porn will never go away. However, just like any other crime, making the act illegal will hopefully deter both the posters and the website hosts. Some will start to balance the satisfaction gained from posting the photos against criminal punishment and a criminal record, and decide posting these photos is not worth it. Unlike consensual pornography, the only goal of posting Revenge Porn is to humiliate and harass the subject.** It is the cyber equivalent of sexual harassment and stalking, which are already illegal. Photos on the Internet never go away; thus focusing efforts towards liability only after photos are posted should not be the ultimate goal. **Legislation should work towards deterring people from posting the photos and hosting these websites in the first place. Criminal codes across the nation should catch up with technology and culture by criminalizing Revenge Porn practices of both those who create the websites and those who post on the websites.**

#### Revenge porn laws restrict free speech [competition/link arg]

**Robertson:** Robertson, Hope [Guest Contributor, Campbell Law Observer] “The Criminalization of Revenge Porn.” *Campbell Law Review.* July 2015. RP

**A major concern with criminalizing Revenge Porn is the criminalization and infringement of free speech. Criminalizing Revenge Porn would inherently restrict speech. When a law is made that restricts free speech, the government must have a compelling interest to restrict the speech, and the law must be narrowly tailored to restrict only that speech. Groups like the ACLU have expressed major concerns with criminalizing Revenge Porn because of the infringement on free speech. On July 10, 2015 ACLU was successful in stopping Arizona’s revenge porn laws due to First Amendment violations**. Part of the concern comes from the fact that some statutes do not require identification of victims, so there is no identifiable harm. Also, some statutes only require the harm to be emotional distress, and some states do not allow a victim to recover only under emotional distress, instead she must prove other harms like the loss of a job because of the photo. Others have expressed concern over whether the government has an interest in restricting Revenge Porn speech.

#### Here is what a law would do

**Robertson:** Robertson, Hope [Guest Contributor, Campbell Law Observer] “The Criminalization of Revenge Porn.” *Campbell Law Review.* July 2015. RP

All states need to adopt statutes to criminalize Revenge Porn. It is a severe invasion of privacy, as well as criminal abuse and harassment. **An ideal Revenge Porn criminalization statute would include the ability to punish both website creators and those who post on the sites. It would include punishment for photos taken with and without consent, and would not differentiate between who took the photo**. It would include definitions of what is and is not considered obscene Revenge Porn, not making the statute too broad or too narrow. **It would also close any loopholes in regards to jurisdiction. It would be based on objective intent and not subjective intent**, as well as actual and potential harm. **It would also provide the ability to force website owners to destroy the material on their website.**

### Delgado and Stefancic – Four Observations About Hate Speech

#### Radical proposals, like not restricting any free speech, trade off with other rights and cede power to conservatives.

**Delgado and Stefancic:** Richard Delgado and Jean Stefancic [Delgado is Charles Inglis Thomson Professor of Law, University of Colorado. J.D., U. Cali- fornia-Berkeley, 1974. Stefancic is theTechnical Services Librarian, University of San Francisco School of Law. M.L.S., Simmons College, 1963; M.A., University of San Francisco, 1989. “FOUR OBSERVATIONS ABOUT HATE SPEECH.” *Wake Forest Law Review.* Volume 44. 2009. RP

Our first observation concerns not so much the merits of the two positions as the nature of the pitched battle that is taking place. **Each of the controversies mentioned earlier features a progressive organization trying to impose its view on another of the same or very similar stripe. With hate speech, for example, the ACLU, FIRE, and other progressive organizations clash with campus authorities and activists of color over the legitimacy of controlling that form of expression**. In the simplest terms, First Amendment defenders maintain that campus speech should be free, while their adversaries insist that the campus should be free—but of racism. Their dispute features contrasting views about how to frame the central issue, the governing narrative, controlling case law, and the lessons of history. As we have noted, free-speech defenders invoke case law such as Brandenburg v. Ohio32 and New York Times Co. v. Sullivan33 that has decisively expanded the scope of free speech. These advocates invoke a particular kind of story, or narrative, as well. For them, defense of campus speech is part of a history that includes the struggle of Western society to rise above superstition and enforced orthodoxy.34 They cite heroes, such as Socrates, Galileo, and Peter Zenger, who put their bodies on the line to expand free expression, and writers such as John Locke, David Hume, Thomas Hobbes, and Voltaire, who placed it on a firm theoretical foundation.The equality faction approaches the problem from a different perspective. For them, defending racial and sexual minorities from hateful invective is an essential feature of safeguarding equal protection and equal dignity or, in the case of university administrators, a healthy environment for learning.36 This group, too, has its favorite cases, but they are ones like Brown v. Board of Education37 that emphasize the role of equality in education and other areas of life.38 Like their counterparts on the other side, they invoke stories that lie close to America’s core, including those of civil rights heroes like Medgar Evers, Rosa Parks, and Cesar Chavez, who fought to expand the rights of all citizens. They call upon different theorists, including Charles Lawrence and Catharine MacKinnon, who propose frameworks for limiting hateful expression. They cite the example of many Western democracies that have done just that. We mention the above not to highlight the indeterminacy of the debate or the way in which one can cite constitutional values on either side. We have done this elsewhere and believe that the party of multiculturalism has the better argument. Instead, we mention it to point out a feature that ought to have been obvious all along, but that we and most other commentators seem to have missed—namely, how the debate proceeds almost entirely between two groups of the progressive left: the ACLU and its followers, on the one hand, and minority groups, critical race theorists, and their allies on the other. **The struggle, in short, proceeds between two sets of progressive activists who, in most respects, see the world in very similar terms, consuming attention and energy at the very time when the political right—which holds little affection for either of them—has been registering large gains**. **For example, while the ACLU has been laboring to convince minorities of the error of their ways, conservative power has been rolling back the right of privacy by opening citizens’ library records to official prying and insisting on the right to snoop on e-mail and telephone exchanges**. At the same time, conservatives in government have carved out a broad sphere of governmental secrecy, greatly limiting the public’s access to information.49 These are, of course, areas close to a civil libertarian’s heart. By the same token, scholars like those writing for this symposium have been trying to convince the free-speech advocates of the error of their ways, while conservative judges and administrators have been steadily dismantling programs that lie close to the heart of civil rights advocates, including affirmative action, bilingual education, and the rights of immigrants.52 These same conservative judges and administrators have also been weakening courts’ abilities to redress racial discrimination through judicially created intent requirements, strict chains of causation, and limitations on who may sue and when.Two groups of moderate leftists have thus been energetically clashing while conservatives have been making steady inroads into programs both sets of leftists hold dear. This reality suggests that moderate leftists might wish to find some common ground and turn their attention to what their adversaries have been achieving at their expense. **One could analogize the situation to one in which two dogs, one slightly larger than the other, are carrying on a ferocious snarl-fest in the middle of the street, feinting and lunging, making a tremendous racket, blissfully unaware that the dog catchers are coming to take them to the municipal shelter where they will be euthanized ten days late**r.54 It is possible that with a new administration, the conservative assault on civil liberties and civil rights will ease somewhat. But historical forces such as the war on terror55 and the new color-blind approach to race relations56 are likely to generate continuing pressure on the progressive agenda regardless of who is in power in Washington. The hate-speech adversaries (and we do not exclude ourselves) need to ponder the expenditure of energy that they have been making and whether a détente of some sort is in order.57

#### Hate speech causes genocide

**Delgado and Stefancic:** Richard Delgado and Jean Stefancic [Delgado is Charles Inglis Thomson Professor of Law, University of Colorado. J.D., U. Cali- fornia-Berkeley, 1974. Stefancic is theTechnical Services Librarian, University of San Francisco School of Law. M.L.S., Simmons College, 1963; M.A., University of San Francisco, 1989. “FOUR OBSERVATIONS ABOUT HATE SPEECH.” *Wake Forest Law Review.* Volume 44. 2009. RP

**With general hate speech, such as anonymously circulated flyers or speeches to a crowd, the harms, while diffuse, may be just as serious. Recent scholarship shows how practically every instance of genocide came on the heels of a wave of hate speech depicting the victims in belittling terms.75 For example, before launching their wave of deadly attacks on the Tutsis in Rwanda, Hutus in government and the media disseminated a drumbeat of messages casting their ethnic rivals as despicable.76 The Third Reich did much the same with the Jews during the period leading up to the Holocaust. When the United States enslaved African Americans and killed or removed the Indians, it rationalized that these were simple folk who needed discipline and tutelage, or else bloodthirsty savages who resisted the blessings of civilization.** When, a little later, the nation marched westward in pursuit of manifest destiny, it justified taking over the rich lands of California and the Southwest on the ground that the indolent Mexicans living on them did not deserve their good fortune. Before interning the Japanese during World War II, propagandists depicted the group as sneaky, suspicious, and despotic. **It is possible that the connection between general hate speech and instances of mass oppression may not be merely statistical and contingent, but conceptual and necessary. Concerted action requires an intelligible intention or rationale capable of being understood by others. One cannot mistreat another group without first articulating a reason why one is doing it**—otherwise, no one but a sadist would join in. Without a softening-up period, early steps toward genocide, such as removing Jews to a ghetto, would strike others as gratuitous and command little support. Discriminatory action of any kind presupposes a group that labors under a stigma of some kind. The prime mechanism for the creation of such stigma is hate speech**. Without it, genocide, imperialism, Indian removal, and Jim Crow could gain little purchase.**

#### Other countries and social science disprove the pressure valve argument.

**Delgado and Stefancic:** Richard Delgado and Jean Stefancic [Delgado is Charles Inglis Thomson Professor of Law, University of Colorado. J.D., U. Cali- fornia-Berkeley, 1974. Stefancic is theTechnical Services Librarian, University of San Francisco School of Law. M.L.S., Simmons College, 1963; M.A., University of San Francisco, 1989. “FOUR OBSERVATIONS ABOUT HATE SPEECH.” *Wake Forest Law Review.* Volume 44. 2009. RP

**If the harms of hate speech are sobering, what lies on the other side? What happens to the hate speaker forced to hold things in? Will he or she suffer psychological injury**, depression, nightmares, drug addiction, and a blunted self-image? Diminished pecuniary and personal prospects? Will hate-speech regulation set up the speaker’s group for extermination, seizure of ancestral lands, or anything comparable? The very possibility seems far-fetched. **And, indeed, regimes, such as Europe’s and Canada’s, that criminalize hate speech exhibit none of these ills. Speech and inquiry there seem as free and uninhibited as in the United States, and their press just as feisty as our own. What about harm to the hate speaker? The individual who holds his or her tongue for fear of official sanction may be momentarily irritated. But “bottling it up” seems not to inflict serious psychological or emotional damage. Early in the debate about hate speech, some posited that a prejudiced individual forced to keep his impulses in check might become more dangerous as a result. By analogy to a pressure valve, he or she might explode in a more serious form of hate speech or even a physical attack on a member of the target group.** **But studies examining this possibility discount it. Indeed, the bigot who expresses his sentiment aloud is apt to be more dangerous, not less, as a result.** The incident “revs him up” for the next one, while giving onlookers the impression that baiting minorities is socially acceptable, so that they may follow suit. **A recently developed social science instrument, the Implicit Association Test (“IAT”), shows that many Americans harbor measurable animus toward racial minorities**.96 Might it be that hearing hate speech, in person or on the radio, contributes to that result?97

#### There are tons of exceptions to the First Amendment in the status quo – that non-uniques Aff offense.

**Delgado and Stefancic:** Richard Delgado and Jean Stefancic [Delgado is Charles Inglis Thomson Professor of Law, University of Colorado. J.D., U. Cali- fornia-Berkeley, 1974. Stefancic is theTechnical Services Librarian, University of San Francisco School of Law. M.L.S., Simmons College, 1963; M.A., University of San Francisco, 1989. “FOUR OBSERVATIONS ABOUT HATE SPEECH.” *Wake Forest Law Review.* Volume 44. 2009. RP

**Not all speech is free. The current legal landscape contains many exceptions and special doctrines corresponding to speech that society has decided it may legitimately punish. Some of these are: words of conspiracy; libel and defamation; copyright violation; words of threat; misleading advertising; disrespectful words uttered to a judge, police officer, or other authority figure; obscenity; and words that create a risk of imminent violence. If speech is not a seamless web, the issue is whether the case for prohibiting hate speech is as compelling as that underlying existing exceptions.** First Amendment defenders often assert that coining a new exception raises the specter of additional ones, culminating, potentially, in official censorship and Big Brother. But our tolerance for a wide array of special doctrines suggests that this fear may be exaggerated and that a case-by-case approach may be quite feasible. **How important is it to protect a black undergraduate walking home late at night from the campus library? As important as a truthful label on a can of dog food or safeguarding the dignity of a minor state official?** Neither free-speech advocates nor courts have addressed matters like these, but a rational approach to the issue of hate-speech regulation suggests that they should.

#### A risk of hate speech outweighs – we should side with the victim – Rawlsian systems also negate.

**Delgado and Stefancic:** Richard Delgado and Jean Stefancic [Delgado is Charles Inglis Thomson Professor of Law, University of Colorado. J.D., U. Cali- fornia-Berkeley, 1974. Stefancic is theTechnical Services Librarian, University of San Francisco School of Law. M.L.S., Simmons College, 1963; M.A., University of San Francisco, 1989. “FOUR OBSERVATIONS ABOUT HATE SPEECH.” *Wake Forest Law Review.* Volume 44. 2009. RP

Two final aspects of hate speech are incessancy—the tendency to recur repeatedly in the life of a victim—and compounding. A victim of a racist or similar insult is likely to have heard it more than once. In this respect, a racial epithet differs from an insult such as “You damn idiot driver” or “Watch where you’re going, you klutz” that the listener is apt to hear only occasionally. Like water dripping on stone, racist speech impinges on one who has heard similar remarks many times before. Each episode builds on the last, reopening a wound likely still to be raw. The legal system, in a number of settings, recognizes the harm of an act known to inflict a cumulative harm. Ranging from eggshell plaintiffs to the physician who fails to secure fully informed consent, we commonly judge the blameworthiness of an action in light of the victim’s vulnerability. **When free-speech absolutists trivialize the injury of hate speech as simple offense, they ignore how it targets the victim because of a condition he or she cannot change and that is part of the victim’s very identity.** Hate speakers “pile on,” injuring in a way in which the victim has been injured several times before. The would-be hate speaker forced to keep his thoughts to himself suffers no comparable harm. **A comparison of the harms to the speaker and the victim of hate speech, then, suggests that a regime of unregulated hate speech is costly, both individually and socially. Yet, even if the harms on both sides were similar, one of the parties is more disadvantaged than the other, so that Rawls’s difference principle suggests that, as a moral matter, we break the tie in the victim’s favor**. Moreover, the magnitude of error can easily be greater, even in First Amendment terms, on the side of nonregulation. Hate speech warps the dialogic community by depriving its victims of credibility. Who would listen to one who appears, in a thousand scripts, cartoons, stories, and narratives as a buffoon, lazy desperado, or wanton criminal? **Because one consequence of hate speech is to diminish the status of one group vis-à-vis all the rest, it deprives the singled-out group of credibility and an audience, a result surely at odds with the underlying rationales of a system of free expression**.

### Delgado and Yun – Neoconservatives

#### Speech codes don’t waste time – they’re a crucial first step to reorienting how we view minorities.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “The Neoconservative Case Against Hate-Speech Regulation-Lively, D'Souza, Gates, Carter, and the Toughlove Crowd.” *Vanderbilt Law Review.* November 1994. RP

**Many neoconservative writers who have taken a position against regulation argue that mobilizing against hate speech is a waste of precious time and resources.** Donald Lively, for example, writes that civil rights activists ought to have better things to do, and that concentrating on hate-speech reform is myopic and calculated to benefit only a small number of blacks and other minority persons. n29 Instead of "picking relatively small fights of their own convenience," n30 racial reformers should be examining "the obstacles that truly impede" racial progress, namely bad laws and too little money. n31 Other toughlove writers echo Lively's conclusions. Dinesh D'Souza writes that campus radicals espouse hate- speech regulation because it is easier than studying hard and getting a first-rate education. n32 Stephen Carter also has little good to say about the hate speech crusade, describing it as a digression and a distraction. n33 Henry Louis Gates expresses perhaps the sharpest disdain for anti-hate-speech activism, wondering why this ephemeral subject attracts the attention of so many academics and thinkers when so much more serious work remains to be done. n34 In a cover story in the New Republic reviewing Words That Wound, Gates, chair of the department of African American studies at Harvard, writes that addressing rac- ist speech does lip service to civil rights without dealing with the material reality of economic subordination. But is it so clear that efforts to control hate speech are a waste of time and resources, at least compared to other problems that the campaigners could be addressing? **What neoconservative writers may fail to realize is that eliminating hate speech goes hand in hand with reducing what they term "real racism."** Certainly, being the victim of hate speech is a less serious affront than being denied a job, a house, or an education. **It is, however, equally true that a society that speaks and thinks of minorities derisively is fostering an environment in which such discrimination will occur frequently.** This is so for two reasons. **First, hate speech, in combination with an entire panoply of media imagery, constructs and reinforces a picture of minorities in the public mind**. This picture or stereotype varies from era to era, but is rare- ly positive: persons of color are happy and carefree, lascivious, criminal, devious, treacherous, untrustworthy, immoral, of lower intelligence than whites, and so on. n37 This stereotype guides action, accounting for much misery in the lives of persons of color. Examples include mo- torists who fail to stop to aid a stranded black driver, police officers who hassle African-American youths innocently walking or speaking to each other on the streets, or landlords who act on hunches or unarticulated feelings in renting an apartment to a white over an equally or more qualified black or Mexican. Once the stage is set-once persons of color are rendered one-down in the minds of hundreds of actors-the selection of minorities as victims of what even the toughlove crowd would recognize as real discrimination increases in frequency and severity. It also acquires its capacity to sting. A white motorist who suffers an epithet ("goddam college kid!") may be momentarily stunned. But the epithet does not call upon an entire cultural legacy the way a racial epithet does, nor deny the victim her status and personhood. n38 A second reason why even neoconservatives ought to pause before throwing their weight against hate-speech rules has to do with the nature of latter-day racism. n39 Most neoconservatives, like many white people, think that acts of outand-out discrimination are rare today. **The racism that remains is subtle, "institutional," or "latter-day."** n40 It lies in the arena of unarticulated feelings, practices, and patterns of behavior (like promotions policy) on the part of institutions as well as individuals. A forthright focus on speech and language may be one of the few means of addressing and curing this kind of racism. Thought and language are inextricably connected. n41 **A speaker who is asked to reconsider his or her use of language may begin to reflect on the way he or she thinks about a subject**. Words, external manifestations of thought, supply a window into the unconscious. Our choice of word, metaphor, or image gives signs of the attitudes we have about a person or subject. n42 No readier or more effective tool than a focus on language exists to deal with subtle or latter-day racism. Since neoconservatives are among the prime proponents of the notion that this form of racism is the only (or the main) one that remains, they should think carefully before taking a stand in opposition to measures that might make inroads into it. **Of course, speech codes would not reach every form of demeaning speech or depiction. But a tool's unsuitability to redress every aspect of a problem is surely no reason for refusing to employ it where it is effec- tive.**

#### Speech laws don’t increase the power of racist institutions, and empirically do promote democratic gains – scholars like Gates are just wrong

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “The Neoconservative Case Against Hate-Speech Regulation-Lively, D'Souza, Gates, Carter, and the Toughlove Crowd.” *Vanderbilt Law Review.* November 1994. RP

**Neoconservatives also argue against hate-speech regulation on the ground, similar to the deflection argument, that the effort is quixotic or disingenuous. White people will never accede to such rules.** Proponents of hate-speech regula- tion surely must know this, they reason, hence their objectives are probably symbolic, tactical, or at any rate something other than what they say. Lively, for example, writes that the U.S. Supreme Court has consistently rejected laws regu- lating speech, finding them vague and overbroad. n43 He also writes that the campaign lacks vision and a sense of "mar- ketability"-it simply cannot be sold to the American people. n44 **Gates asks how hate-speech activists can possibly be- lieve that campus regulations, even if enacted, will prove effective**. If campuses are the seething arenas of racism that activists believe, how will campus administrators and hearing officials provide nondiscriminatory hearings on charges brought under the codes? n45 Elsewhere he accuses the hate-speech activists of pressing their claims for merely "symbol- ic" reasons, n46 while ignoring that the free-speech side has a legitimate concern over symbolism, too. Carter is less neg- ative about the motivations of hatespeech reformers, but does question whether their campaign is not "unwinnable." n47 But is the effort to curb hate speech doomed, quixotic, or disingenuous? It might be seen in this way if indeed the gains to be reaped were potentially only slight. But, as we argued earlier, they are not: The stakes are large, indeed our entire panoply of civil rights laws and rules depends for its efficacy on controlling the background of harmful depiction against which the rules and practices operate. n48 In a society where minorities are thought and spoken of respectfully, few acts of out-and-out discrimination would take place. In one that harries and demeans them at every turn, even a de- termined judiciary will not be able to enforce equality and racial justice. n49 Moreover, success is more possible than the toughlove crowd would like to acknowledge. A **host of Western in- dustrialized democracies have instituted laws against hate speech and hate crime, often in the face of initial resistance. n50 Some, like Canada, Great Britain, and Sweden, have traditions of respect for free speech and inquiry rivaling ours**. n51 **Determined advocacy might well accomplish the same here. In recent years, many-perhaps several hundred-college campuses have seen fit to institute student conduct codes penalizing face-to-face insults of an ethnic or similar nature**, many in order to advance interests that the campus straightforwardly identified as necessary to its function, such as pro- tecting diversity or providing an environment conducive to education. n52 Moreover, powerful actors like government agencies, the writers' lobby, industries, and so on have generally been quite successful at coining free speech "excep- tions" to suit their interest-libel, defamation, false advertising, copyright, plagiarism, words of threat, and words of mo- nopoly, just to name a few. n53 Each of these seems natural and justified, because time-honored, and perhaps each is. **But the magnitude of the interest underlying these exceptions seems no less than that of a young black undergraduate sub- ject to hateful verbal abuse while walking late at night on campus.** n54 New regulation is of course subject to searching scrutiny in our laissez-faire age. But the history of free speech doctrine, especially the landscape of "exceptions," shows that need and policy have a way of being translated into law. n55 The same may well continue to happen with the hate- speech movement.

#### Regulation doesn’t drive hate underground but cures it instead – people change their attitudes.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “The Neoconservative Case Against Hate-Speech Regulation-Lively, D'Souza, Gates, Carter, and the Toughlove Crowd.” *Vanderbilt Law Review.* November 1994. RP

**A further argument one hears from the anti-rule camp is that hate speech should not be driven underground, but rather allowed to remain out in the open. The racist who one does not know is far more dangerous than the one who one does. Moreover, on a college campus, incidents of overt racism or sexism can serve as useful spurs for discussion and institutional self-examination**. Carter, for example, writes that regulating racist speech will leave minorities no better off than they are now, while screening out "hard truths about the way many white people look at . . . us." n56 D'Souza echoes this argument, but with a reverse twist, when he points out that the hate-speech crusaders are missing a valuable opportunity. When racist graf- fiti or hateful fraternity parties proliferate, minorities should reflect on the possibility that this may signal something basically wrong with affirmative action. n57 Instead of tinkering futilely with the outward signs of malaise, we ought to deal directly with the problem itself. n58 An editor of Southern California Law Review argues that antiracism rules are tantamount to "sweeping the problem under the rug," whereas "keeping the problem in the public spotlight . . . enables members [of the university community] to attack it when it surfaces." n59 How should we see the bellwether argument? In one respect, the argument does make a valid point. All other things being equal, the racist who is known is less dangerous than the one who is not. n60 **What the argument ignores is that** there is a third alternative, namely the racist who is cured**, or at least deterred by rules, policies, and official state- ments so as to no longer exhibit the behavior he or she once did. Since most conservatives believe that rules and penal- ties change conduct (indeed they are among the strongest proponents of heavy penalties for crime), the possibility that campus guidelines against hate speech and assault would decrease those behaviors ought to be conceded.** n61 Of course, the conservative may argue that regulation has costs of its own-something even the two of us would concede-but this is a different argument from the bellwether one.

#### Regulations cause more open discussion than doing nothing – there isn’t any tradeoff.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “The Neoconservative Case Against Hate-Speech Regulation-Lively, D'Souza, Gates, Carter, and the Toughlove Crowd.” *Vanderbilt Law Review.* November 1994. RP

**A further neoconservative objection is that silencing the racist through legislation might deprive the campus com- munity of the "town hall" opportunity it has to discuss and analyze issues of race when incidents of racism come to light**. n63 **But campuses could hold those meetings and discussions anyway. The rules are not likely to suppress hate speech entirely; even with them in place, there will continue to be some number of incidents of racist speech** and behav- ior. **The difference is that now there will be the possibility of campus disciplinary hearings, which are even more likely to instigate the "town hall" discussions the argument assumes are desirable**. Because the bellwether argument ignores that rules will have at least some edifying effect and that there are other ways of having campuswide discussions short of allowing racial confrontation to flourish, the argument appears to deserve little weight.

#### The absence of speech codes is victim blaming – even if counterspeech is good, codes should be an option for minorities

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “The Neoconservative Case Against Hate-Speech Regulation-Lively, D'Souza, Gates, Carter, and the Toughlove Crowd.” *Vanderbilt Law Review.* November 1994. RP

**A fourth argument many neoconservative critics of hate speech regulations make is that prohibitions against verbal abuse are unwise because they encourage minorities to see themselves as victims. Instead of rushing to the authorities every time they hear something that wounds their feelings, persons from minority groups ought to learn to speak back or ignore the offending behavior**. A system of rules and complaints reinforces in their minds that they are weak and in need of protection, that their lot in life is to be victimized rather than to make use of those opportunities that are available to them. Carter, for example, writes that anti-hate speech rules cater to "those whose backgrounds of oppression make them especially sensitive to the threatening nuances that lurk behind racist sentiment." n64 Lively warns that the rules reinforce a system of "supplication and self-abasement"; D'Souza that they distort and prevent interracial friendships and encourage a "crybaby" attitude; n66 Gates that they reinforce a "therapeutic" mentality and an unhealthy preoccupa- tion with feelings. n67 **Would putting into place hate-speech rules induce passivity and a victim mentality among minority populations? This seems unlikely, among other reasons because other alternatives will remain as before. No African American or lesbian student is required to make a complaint when targeted by vicious verbal abuse. He or she can talk back or ignore it if he or she sees fit.** Hate-speech rules simply provide an additional avenue of recourse to those who wish to take ad- vantage of them. Indeed, one could argue that filing a complaint constitutes one way of taking charge of one's destiny: One is active, instead of passively "lumping it" when verbal abuse strikes. **It is worth noting that we do not make the "victimization" charge in connection with other offenses that we suffer, such as having a car stolen or a house burglar- ized, nor do we encourage those victimized in this fashion to "rise above it" or talk back to their victimizer**. If we see recourse differently in the two sets of situations it may be because we secretly believe that a black who is called "nig- ger" by a group of whites is in reality not a victim. If so, it would make sense to encourage him not to dwell on or sulk over the event. But this is different from saying that filing a complaint deepens victimization; moreover, many studies have shown it simply is untrue. n68 Racist speech is the harm. Filing a complaint is not. There is no empirical evidence that filing a civil rights complaint causes otherwise innocuous behavior to acquire the capacity to harm the complainant.

#### Sanitized expressions aren’t as bad as overt racial expressions, as they allow for more of a response

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “The Neoconservative Case Against Hate-Speech Regulation-Lively, D'Souza, Gates, Carter, and the Toughlove Crowd.” *Vanderbilt Law Review.* November 1994. RP

**A further argument some neoconservatives make is that the effort to limit hate-speech through enactment of cam- pus rules is classist. The rules will end up punishing only what naive or blue-collar students do and say. The more refined, indirect, but more devastating expressions of contempt of the more highly educated classes will pass unpunished. Henry Louis Gates offers the following comparison:** (A) LeVon, if you find yourself struggling in your classes here, you should realize it isn't your fault. It's simply that you're the beneficiary of a disruptive policy of affirmative action that places underqualified, underprepared and often undertalented black students in demanding educational environments like this one. The policy's egalitarian aims may be well-intentioned, but given the fact that aptitude tests place African Americans almost a full standard deviation below the mean, even controlling for socioeconomic disparities, they are also profoundly misguided. The truth is, you probably don't belong here, and your college experience will be a long downhill slide. (B) Out of my face, jungle bunny. n69 Lively and D'Souza make versions of the same argument, Lively urging that the codes reach only blue-collar rac- ism and are backed only by academic elites; n70 D'Souza that the rules aim to enforce a "social etiquette among students, while ignoring the higher-echelon racism of meaningful glances and rolling of eyes of university higherups." n71 In one respect, the classist argument is plainly off target. **Both blue-collar and upper-class people will be prohibited from uttering specified slurs and epithets**. Many hate-speech codes penalize serious face-to-face insults based on race, ethnicity, and a few other factors. n72 Such rules would penalize the same harmful speech-for example, "Nigger, go back to Africa; you don't belong at this university"-whether spoken by the millionaire's son or the coal miner's daughter. If, in fact, the prep school product is less likely to utter words of this kind, or to utter only intellectualized versions like the one in Gates' example, n73 this may be because he is less racist in a raw sense. If, as many social scientists believe, prej- udice tends to be inversely correlated with educational level and social position, the wealthy and well educated may well violate hate-speech rules less often than others. n74 And, to return to Gates' example, there is a **difference between his two illustrations, although it is not in the direction he seems to suggest. "Out of my face, jungle bunny" is a more serious example of hate speech because it (1) is not open to argument or a more-speech response; and (2) has overtones of a direct physical threat. The other version, while deplorable, is unlikely to be coupled with a physical threat, and is answerable by more speech.**

### Winkler

#### Only federal laws get enforced – judges follow federal precedent more.

**Winkler:** Winkler, Adam [Professor, UCLA School of Law] “Free Speech Federalism.” *Michigan Law Review.* Volume 108. 2009. RP

First, federal courts might defer to federal lawmakers relative to state and local lawmakers. A growing literature in political science and law ar- gues that judges often act strategically when exercising judicial review.'9 In deciding cases, judges often anticipate the potential reaction of other governmental actors and shape their decisions in ways designed to minimize backlash-what has been termed a "separation of powers" game.'° **In the federal government, Congress and the Executive have both carrots and sticks to encourage judicial compliance with their policies.** Among the carrots are judicial promotion; numerous scholarly studies suggest that federal judges may shape their behavior to enhance their chances of being elevated to a higher court. **Among the sticks are constitutional amendment**, 22 intentional reshaping of the judiciary through a politicized nomination process, 23'court packing24 (or unpacking25), impeachment, and budget and salary reduction. Congress can also adopt laws stripping the courts of jurisdiction over particular matters, as happened during Reconstruction2 and has been threatened repeatedly since the Warren Court days. 3 According to William Eskridge and Philip Frickey, "there is a growing body of empirical evidence indicating that the Court bends its decisions to avoid overrides or other political discipline."'" **In contrast to Congress and the Executive, state and local governments have relatively little ability to discipline federal courts for overly aggressive judicial review.** Prior to the adoption of the Seventeenth Amendment, state officials had "institutional weapons" that "could be used to influence out- comes at the Supreme Court and other federal courts if those courts threatened the institutional interests of state legislatures."" For example, state legislators could appoint Senators who might threaten to vote against judicial nominees thought to be hostile to state interests. But once Senators were popularly elected rather than accountable to state legislatures, courts were "free to hold state laws unconstitutional without significant fear [of] ...retaliation."'33 Local lawmakers have even less ability than state lawmakers to discipline federal judges, with little more than the power to complain about judicial rulings. State interests are still presumably represented, at least in part, by popularly elected senators-even though the direct interests of the state legislature no longer impinge on the confirmation process. Local lawmakers don't even have that small remnant of influence on federal judicial nominees. William Landes and Richard Posner have recognized that federal courts tend to be reluctant to invalidate federal laws, yet such hesitation diminishes "as we move from regulation that is less local to regulation ' that is more local. Even if federal judges do not fear discipline, they might still defer to federal lawmakers because they trust them more than state and local law- makers when it comes to matters of fundamental rights.3 The Supreme Court has given voice to a certain prejudice against state and local governments before. In West Virginia Board of Education v. Barnette, the famous flag salute case, the Court wrote that "small and local authority may feel less sense of responsibility to the Constitution, and agencies of publicity may be less vigilant in calling it to account. In terms of individual rights the state and local governments earned a reputation for being untrustworthy in the most important high-profile constitutional controversy of the twenti- eth century: the struggle for civil rights for racial minorities. Localism in particular has suffered from its association with an ideology of racial segre- gation. According to David Barron, there is a "deep-seated intuition that local governments are islands of private parochialism which are likely to frustrate the effective enforcement of federal constitutional rights.",3s By con- trast, the modem constitutional tradition "asserts that rights-protecting institutions like the Court or the federal government are required to con- strain local exercises of power that oppress minorities."' 9 **Another reason federal laws might survive more often than state or local laws stems from the supply side of constitutional adjudication: federal laws may be of higher quality than state laws,** and state laws may be of higher quality than local laws. "Quality," as I use the term here, refers to the expected fit between the law and existing constitutional doctrine. A high- quality law is one that, ex ante, would be predicted to have a strong likelihood of surviving judicial review because it corresponds to controlling precedent. A poor-quality law, by contrast, is one that a reasonable lawyer would predict will be invalidated based on the case law.

#### Federal law better checks oppression than state law

**Winkler:** Winkler, Adam [Professor, UCLA School of Law] “Free Speech Federalism.” *Michigan Law Review.* Volume 108. 2009. RP

**To understand why the level of government might affect the constitutional quality of a law, we can return to our original and greatest constitutional theorist: James Madison**. Madison in Federalist10 focused on the problem of "faction"-groups of citizens united by a "common impulse of passion . . . adverse to the rights of other citizens' 40 who threatened core rights, such as speech. **Although Madison believed that "the causes of fac- tion cannot be removed," he reasoned that the national government would better protect against their tyranny than state and local governments.** Ac- cording to Madison, "[tlhe smaller the society, the fewer probably will be the distinct parties and interests composing it," the more risk of "local pre- judices and schemes of injustice," and "the more easily will they concert and execute their plans of oppression."43 **In contrast, the national government would be sufficiently large that no faction could easily achieve dominance. "Extend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizen**s .... Modem public-choice theory largely concurs with Madison's assess- ment. Lawmaking is often the product of bargains between politically influential interest groups and government officials. But because of differ- ences in interest group pressures-akin to Madison's "factions"46--one would expect, in the words of Jonathan Macey, federal law to be a "higher quality product than state law.' 47 **Owing to the relatively large number of interests represented by both elected officials and lobbying groups, federal lawmaking tends to require compromise and moderation**, 48 diluting the like- lihood of any piece of legislation catering to a specific, potentially oppressive interest. 49 Such bargaining is especially hard for an interest that is out of the mainstream, as it must co-opt mainstream elements in order to be successful. **At the state (and even more so, the local) level, by contrast, the range of represented interests tends to be smaller and the constituencies more homogenous** 0 As a result, oppressive legislation is easier to achieve in a single state or municipality than at the national level.5 This is especially true for groups out of the national mainstream that nevertheless fit com- fortably within the culture or demographics of a single state or locality.

#### Federal policies are easier to monitor and enforce – activist groups ca more easily keep track of them.

**Winkler:** Winkler, Adam [Professor, UCLA School of Law] “Free Speech Federalism.” *Michigan Law Review.* Volume 108. 2009. RP

Moreover, where constituents are relatively homogenous, legislators can gain political capital by pursuing policies that run directly counter to pre- vailing national norms, even constitutional ones." That the federal courts are likely to overturn a law that mandates, say, prayer in school, may provide an additional reason for some local politicians to enact it. Their constituents may like that they are "standing up" to the federal courts and the erroneous decisions of the Supreme Court. **Additionally, as one moves down the federalist hierarchy, we might expect more speech burdens to be adopted without the attention of the press and organized national interest groups. When a local public library considers denying access to one of its meeting rooms to a religious group, no organized interests are likely to even know about it much less lobby to stop it. The ACLU may not notice the local public library's decision, but it will know about every proposed federal law or federal agency regulation that burdens speech.**

#### Only federal rulings avoid rollback

**Winkler:** Winkler, Adam [Professor, UCLA School of Law] “Free Speech Federalism.” *Michigan Law Review.* Volume 108. 2009. RP

**To analyze the role of different levels of government in free speech cases, I first collected and coded every published federal court decision that considered the constitutionality of a restriction on "core" free speech rights decided over a 14-year period**. I choose the years 1990 through 2003 to se- cure a sufficient number of cases to derive robust results. I focus here on free speech cases where, under existing doctrine, the courts impose the most rigorous form of constitutional review, strict scrutiny. Courts use this test for speech restrictions that touch the heart of the First Amendment, namely, political speech and similar content-based restrictions on expression. I in- cluded only "final" district, circuit, and Supreme Court decisions; overturned or affirmed decisions were omitted to avoid double counting.56 These data have their limitations. First, only federal court decisions are included. State court rulings on free speech issues, whether stemming from the federal or state constitutions, are not included and they may come out differently. Second, the data are comprised only of free speech cases where the federal courts applied strict scrutiny. Although the courts apply strict scrutiny to the most important types of speech restrictions, not all speech restrictions are adjudicated under this standard57 and other speech restric- tions may or may not follow the patterns uncovered in strict scrutiny cases. Third, I include only published decisions, which may or may not replicate the larger set of decided free speech cases. My research uncovered a total of 266 relevant free speech rulings. Of those, only a small fraction (7, or 3%) was comprised of Supreme Court rulings and the vast majority of decisions came from the circuit courts of appeals (106, or 40%) and the district courts (153, or 56%). **The overall rate at which "core" free speech restrictions survived judi- cial review was 21%.** Courts upheld 56 of 266 speech restrictions in the given period. Of the 266 rulings on the constitutionality of speech restrictions, the vast majority involved state and local laws. There were 227 rulings on state and local laws and 39 rulings on federal laws. 8 **As Table 1 indicates, the federal courts upheld a much higher percentage of federal laws than state and local laws. According to this data, state and local speech laws were rarely upheld, while more than half of the federal speech laws survived. State and local laws survived only 15% of the time and federal laws survived 56% of the time.** This difference is statistically significant (p < .000). Even before analyzing the differences between the various levels of gov- ernment, these numbers are notable. The cases included in this study are exclusively strict scrutiny cases. That standard, which is supposed to be the most rigorous form of judicial scrutiny, has been famously called "'strict' in theory and fatal in fact.' 60Yet not only do many speech laws survive strict scrutiny, but well over half of the federal laws do. Clearly, strict scrutiny is not really fatal in fact. This finding corresponds to other recent empirical work I have done on the strict scrutiny standard.

#### Free speech has historically been under the jurisdiction of the federal government but the Aff shifts it to local courts and actors such as colleges

**Winkler:** Winkler, Adam [Professor, UCLA School of Law] “Free Speech Federalism.” *Michigan Law Review.* Volume 108. 2009. RP

Perhaps the most significant constitutional trend of the past two decades has been the so-called "federalism revolution." **After half a century of centralizing constitutional authority in the federal government-and correspondingly diminishing the power of state and local governments-the Rehnquist Court and a cadre of legal scholars argued for reversing course**. This states' rights revolution has centered primarily on Congress's power to regulate commerce and state immunity from federally imposed mandates."3'3 But it has also begun to touch questions of constitutional rights. J**ustice Clarence Thomas, for example, has called for reinterpreting the First Amendment's Establishment Clause to impose limits on only the federal government and not the states.** 3 4 Several notable scholars have similarly called for greater state or local authority to regulate in matters of religious liberty.'35 Others have argued for devolution in matters of constitutional rights more generally. **The federalism effect in free speech cases casts in bold relief some dangers of devolution, especially in matters of fundamental rights. To the extent that federal speech laws are a higher quality product than state and local speech laws, we ought to be wary of giving state and local governments more leeway to burden fundamental rights.** The justifications for devolution emphasize three arguments. First, devo- lution is thought to enhance democratic self-governance by making elected officials more responsive to the voters.'37 By placing authority in the hands of government officials closer to local communities-rather than in a distant Washington, D.C.-those communities are better able to effectuate policies and control their destinies.13 Yet, in light of the poor track record of state and local governments in the area of free speech, one might reasonably question whether enhancing governmental responsiveness to relatively small, geographically compact communities is such a good thing. As Madi- son warned, in smaller jurisdictions there are fewer interests competing against one another and local prejudices can more easily dictate legal out- comes. 3 9 When small, cohesive groups in the electorate control lawmaking, oppression of outsiders and minorities becomes easier. At the federal level, the pressures of competing interest groups make such oppression more diffi- cult to achieve.

#### A2 local governments know communities better

**Winkler:** Winkler, Adam [Professor, UCLA School of Law] “Free Speech Federalism.” *Michigan Law Review.* Volume 108. 2009. RP

The justifications for devolution emphasize three arguments. **First, devolution is thought to enhance democratic self-governance by making elected officials more responsive to the voters.’ By placing authority in the hands of government officials closer to local communities-rather than in a distant Washington, D.C.-those communities are better able to effectuate policies and control their destinies. Yet, in light of the poor track record of state and local governments in the area of free speech, one might reasonably question whether enhancing governmental responsiveness to relatively small, geographically compact communities is such a good thing. As Madison warned, in smaller jurisdictions there are fewer interests competing against one another and local prejudices can more easily dictate legal out- comes. 3 9 When small, cohesive groups in the electorate control lawmaking, oppression of outsiders and minorities becomes easier**. At the federal level, the pressures of competing interest groups make such oppression more difficult to achieve.

#### Only federal policies apply to all people and prevent arbitrary restrictions of dialogue.

**Winkler:** Winkler, Adam [Professor, UCLA School of Law] “Free Speech Federalism.” *Michigan Law Review.* Volume 108. 2009. RP

**The third argument for devolution is that it creates choice in the market- place for governmental services and organizations.** Here, devolution is valued for reasons akin to those used by Justice Harlan to justify relatively lenient judicial treatment of state obscenity laws: federal regulation homogenizes the law by requiring uniformity throughout the nation. To the extent our pluralistic society wishes more diversity, diminished federal power and augmented state and local authority may serve to create variation in legal regimes. People can then choose to move to the area that most resembles their preferences. In one sense, the free speech cases support the premises of this argument: at lower levels of government, there is a range of unusual speech regimes that mobile citizens could choose from. People op- posed to campaign-finance reform or to speech about violence can find jurisdictions with laws that match their desires. **The problem is that choice and diversity are not necessarily values that should be encouraged when it comes to fundamental rights. The right to free speech is supposed to be enjoyed equally by all citizens, regardless of their place of residence. In the traditional understanding of the First Amendment, the citizen choice that is valued is that which comes from un- fettered debate in the marketplace of ideas. If state and local governments can restrict speech, the channels of dialogue are restricted and choice diminished, not enhanced.**

#### Universities won’t craft policies carefully enough [could also be the fism link]

**Winkler:** Winkler, Adam [Professor, UCLA School of Law] “Free Speech Federalism.” *Michigan Law Review.* Volume 108. 2009. RP

**Consider the university context involved in Grutter. Even if a university has an institutional mission to expose students to multiple perspectives and to prepare tomorrow's leaders, university policies are not likely to have been vetted by numerous competing, well-informed interest groups. As bureaucratic entities, universities (even public ones) will tend to be governed authoritatively from those at the top of the relevant hierarchy-administrators with relatively little accountability and thus unlikely to be influenced by voices outside the university. Thus, one might expect that universities and other educational institutions will often adopt laws that stray from existing constitutional standards.** Indeed, there were nineteen university policies and other educational institutions' rules within the free speech data and each one was declared constitutionally impermissible. **At least with regard to core speech rights, educators have not proven to be worthy of any degree of deference.**

### Gust

#### Make trigger warnings only warnings but not a means to avoid the discussion

**Gust:** Gust, Dr. Onni [Doctor and Contributor at the Guar] “I use trigger warnings - but I'm not mollycoddling my students.” June 2016. RP

I vividly remember switching on Monsters Inc, thinking it would entertain my two-year-old nephew. As the shadow of the monster loomed over a sleeping child, my nephew sat rooted to the spot, wide-eyed, barely breathing. I switched off the film and scrambled around for another form of amusement more appropriate for toddlers. Together, we exhaled.  **I teach the history of the idea of monstrosity in the eighteenth-century British Empire, its relationship to deformity, disability and gender nonconformity.** Unlike with two-year-olds, **I do not let my students avoid difficult or disturbing topics.** We read and talk about sexual assault, racism, mutilation, and violence against women. I expect my students to think critically and carefully about the subject matter. **But before we can begin learning, the most important thing that I need each of my students to do is to breathe**. The harder they need to think, the deeper they need to breathe. A stuffy classroom can be the death of a debate and critical thinking requires copious amounts of oxygen. **I use trigger warnings because they help students to stop for a moment and breathe, which helps them to think. A trigger warning (or content note) alerts readers or viewers to violent and disturbing content, which could be sexual assault, racist violence, transphobic or homophobic slurs.** There are various ways of issuing a warning, for example in a lecture I might state that the next slide has a reference to mutilation, or I might add a note in parenthesis on the reading list where a text includes graphic description of sexual violence. **A trigger warning does not give permission for students to skip class, avoid a topic or choose alternative readings. What it does do is signal to survivors of abuse or trauma that they need to keep breathing**. It reminds them to be particularly aware of the skills and coping strategies that they have developed and to switch them on. **Trigger warnings are necessary adjustments for students who hold in their bodies one of the most prevalent but also most disabling of wounds – trauma**. Like adjustments for dyslexia, they do not solve the challenges of being different, they simply make it easier to navigate the difficulty of living in a world that assumes certain norms. Yet if you read the recent debates on trigger warnings you would think that they banned all reading or intellectual engagement. Trigger warnings have become the sign of a generation wrapped in cotton wool; “infantilised” as Stephen Fry recently claimed, or “coddled” according to President Obama. They are represented as the weakening of the stiff upper lip, and thereby the undoing of the “manly” fabric of society. They are seen as the ultimate form of censorship, often ranted about in the same breath as no-platforming and safe spaces. **In fact, trigger warnings are the opposite of this so-called infantilisation - they tell students to hold themselves. They implicitly demand that students assess their own needs and take responsibility for them.**

#### That’s key to learning – people can be a part of the discussion if they’re prepared for it

**Gust:** Gust, Dr. Onni [Doctor and Contributor at the Guar] “I use trigger warnings - but I'm not mollycoddling my students.” June 2016. RP

**Trigger warnings also remind me, as a teacher, to think carefully about how I present material, to ask myself why I am including a particular image or text and to what purpose. Having “triggers” in mind forces me think about the potential diversity of experiences in my classroom, not to make assumptions about my students’ lives and to think carefully about the language I use and the framing of the topic. Equally, trigger warnings remind students who may not have suffered a trauma or may never have faced prejudice and abuse, that these experiences happen.** They tell students that they are sitting in a class with people with different life experiences and they cannot take for granted that their personal story is the norm. **For me, trigger warnings are a fundamental part of feminist teaching because they help create a community of learners who acknowledge difference. Overall, trigger warnings remind everybody, regardless of their personal history, to keep breathing, and to think carefully and compassionately about what they are learning.** They indicate that learning is, and should be, challenging and that learning is, and should be, for everyone.

### Delgado and Stefancic

#### Free speech is an illusion – minority voices will never be heard and are silenced, while exceptions to the First Amendment give the white majority a bully pulpit to exert dominance.

**Delgado and Stefancic:** Richard Delgado and Jean Stefancic [Delgado is Charles Inglis Thomson Professor of Law, University of Colorado. J.D., U. Cali- fornia-Berkeley, 1974. Stefancic is theTechnical Services Librarian, University of San Francisco School of Law. M.L.S., Simmons College, 1963; M.A., University of San Francisco, 1989.] “Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills.” *Cornell Law Review.* Volume 77. September 1992. RP

**Speech and free expression are not only poorly adapted to rem- edy racism, they often make matters worse-far from being stalwart friends, they can impede the cause of racial reform**. First, they en- courage writers, filmmakers, and other creative people to feel amoral, nonresponsible in what they do. 18 8 Because there is a mar- ketplace of ideas, the rationalization goes, another film-maker is free to make an antiracist movie that will cancel out any minor stereotyp- ing in the one I am making. My movie may have other redeeming qualities; besides, it is good entertainment and everyone in the in- dustry uses stock characters like the black maid or the bumbling Asian tourist. How can one create film without stock characters? 18 9 Second, when insurgent groups attempt to use speech as an in- strument of reform, courts almost invariably construe First Amend- ment doctrine against them.1 90 As Charles Lawrence pointed out, **civil rights activists in the sixties made the greatest strides when they acted in defiance of the First Amendment as then understood.**191 They marched, were arrested and convicted; sat in, were arrested and convicted; distributed leaflets, were arrested and convicted. Many years later, after much gallant lawyering and the expenditure of untold hours of effort, the conviction might be reversed on ap- peal if the original action had been sufficiently prayerful, mannerly, and not too interlaced with an action component. This history of the civil rights movement does not bear out the usual assumption that the First Amendment is of great value for racial reformers. 19 2 Current First Amendment law is similarly skewed. **Examination of the many "exceptions" to First Amendment protection discloses that the large majority favor the interests of the powerful**. 19 3 **If one says something disparaging of a wealthy and well-regarded individ- ual, one discovers that one's words were not free after all; the wealthy individual has a type of property interest in his or her com- munity image, damage to which is compensable even though words were the sole instrument of the harm.** Similarly, if one infringes the copyright or trademark of a well-known writer or industrialist, again it turns out that one's action is punishable. 19 5 Further, if one disseminates an official secret valuable to a powerful branch of the military or defense contractor, that speech is punishable. 19 If one speaks disrespectfully to ajudge, police officer, teacher, military offi- cial, or other powerful authority figure, again one discovers that one's words were not free;1 9 7 and so with words used to defraud, 198 form a conspiracy, 199 breach the peace,200 or untruthful words given under oath during a civil or criminal proceeding.20 1 Yet the suggestion that we create new exception to protect lowly and vulnerable members of our society, such as isolated, young black undergraduates attending dominantly white campuses, is often met with consternation: the First Amendment must be a seamless web; minorities, ifthey knew their own self-interest, should appreciate this even more than others. 20 2 **This one-sidedness of free-speech doctrine makes the First Amendment much more valua- ble to the majority than to the minority. The system of free expression also has a powerful after-the-fact apologetic function.** Elite groups use the supposed existence of a marketplace of ideas to justify their own superior position.203 Imag- ine a society in which all As were rich and happy, all Bs were moder- ately comfortable, and all Cs were poor, stigmatized, and reviled. Imagine also that this society scrupulously believes in a free market- place of ideas. Might not the As benefit greatly from such a system? On looking about them and observing the inequality in the distribu- tion of wealth, longevity, happiness, and safety between themselves and the others, they might feel guilt. Perhaps their own superior position is undeserved, or at least requires explanation. But the existence of an ostensibly free marketplace of ideas renders that ef- fort unnecessary. Rationalization is easy: our ideas, our culture competed with their more easygoing ones and won.20 4 It was a fair fight. Our position must be deserved; the distribution of social goods must be roughly what fairness, merit, and equity call for.20 5 It is up to them to change, not us. A free market ofracial depiction resists change for two final rea- sons. First, the dominant pictures, images, narratives, plots, roles, and stories ascribed to, and constituting the public perception of minorities, are always dominantly negative. 20 6 Through an unfortu- nate psychological mechanism, incessant bombardment by images of the sort described in Part I (as well as today's versions) inscribe those negative images on the souls and minds of minority per- sons. 20 7 Minorities internalize the stories they read, see, and hear every day. Persons of color can easily become demoralized, blame themselves,andnotspeakupvigorously.208 **The expense of speech also precludes the stigmatized from participating effectively in the marketplace of ideas**. 20 9 They are often poor-indeed, one theory of racism holds that maintenance of economic inequality is its prime function2 0 -and hence unlikely to command the means to bring countervailing messages to the eyes and ears of others. Second, even when minorities do speak they have little credibil- ity. **Who would listen to, who would credit, a speaker or writer one associates with watermelon-eating, buffoonery, menial work, intel- lectual inadequacy, laziness, lasciviousness, and demanding re- sources beyond his or her deserved share?** Our very imagery of the outsider shows that, contrary to the usual view, society does not really want them to speak out effectively in their own behalf and, in fact, cannot visualize them doing so. Ask yourself: How do outsiders speak in the dominant narratives? Poorly, inarticulately, with broken syntax, short sentences, grunts, and unsophisticated ideas.21' Try to recall a single popular narrative of an eloquent, self-assured black (for example) orator or speaker. In the real world, of course, they exist in profusion. But when we stumble upon them, we are surprised: "What a welcome 'exception'!" Words, then, can wound. But the fine thing about the current situation is that one gets to enjoy a superior position and feel virtu- ous at the same time. By supporting the system of free expression no matter what the cost, one is upholding principle. One can be- long to impeccably liberal organizations and believe one is doing the right thing, even while taking actions that are demonstrably inju- rious to the least privileged, most defenseless segments of our soci- ety.212 In time, one's actions will seem wrong and will be condemned as such, but paradigms change slowly.2 1 3 **The world one helps to create-a world in which denigrating depiction is good or at least acceptable, in which minorities are buffoons, clowns, maids, or Willie Hortons, and only rarely fully individuated human beings with sensitivities, talents, personalities, and frailties-will survive into the future**. One gets to create culture at outsiders' ex- pense. And, one gets to sleep well at night, too. Racism is not a mistake, not a matter of episodic, irrational be- havior carried out by vicious-willed individuals, not a throwback to a long-gone era. It is ritual assertion of supremacy, 214 like animals sneering and posturing to maintain their places in the hierarchy of the colony. It is performed largely unconsciously, just as the ani- mals' behavior is. 2 15 Racism seems right, customary, and inoffensive to those engaged in it, while bringing psychic and pecuniary advan- tages.21 **6 The notion that more speech, more talking, more preach- ing, and more lecturing can counter this system of oppression is appealing, lofty, romantic-and wrong.**

### Curtiss-Lusher

#### We should ban homophobic slurs on campus.

**Barry Curtiss-Lusher:** Curtiss-Lusher, Barry [National Chairman, Anti Defamation League] “The Rutgers Scandal: Bullying and Slurs on Campus.” *The New York Times.* April 2013. RP

Re “[Upon Further Review at Rutgers](http://www.nytimes.com/2013/04/04/opinion/upon-further-review-at-rutgers.html)” (editorial, April 4): **Lost in all of the clamor over the sudden firing of the Rutgers men’s basketball coach, Mike Rice, and what the controversy means for the school’s aspirations toward becoming a Big Ten powerhouse is a more fundamental question of how physical abuse and bigoted speech became part of the normal routine of team practice. The homophobic slurs and abuse that Mr. Rice hurled at his players during practice did not happen in a vacuum. They came after the heartbreaking suicide in September 2010 of Tyler Clementi, a gay freshman at Rutgers whose harassment by fellow students sparked a national discussion about the consequences of cyberbullying and homophobic attitudes. And they raise questions about what, if anything, Rutgers learned from that tragedy. It is time for officials at Rutgers and other universities with top-flight athletic programs to take more forthright action to confront a climate of acceptance for homophobic speech, bullying and physical intimidation. Coaches, administrators, faculty members and student leaders need to step up as well and to make clear that physical and verbal abuse and bigotry have no place in collegiate sports, or anywhere on college campuses.**

### Gillborn

#### White people often use pseudo-scientific evidence to question the intelligence of minorities.

**Gillborn:** Gillborn, David [Professor of Critical Race Studies in Education, Institute of Education, University of London.] “RISK-FREE RACISM: WHITENESS AND SO-CALLED ‘FREE SPEECH’.” *Wake Forest Law Review.* Volume 44. 2009. RP

In this section, **I examine an empirical example of public speech about a controversial issue, namely a supposed link between race and intelligence. I analyze a call-in show which, superficially at least, seems to offer the possibility of a democratic discussion of a popular topic. Beneath the surface, however, all voices are not granted equal authority, even within an editorial system that requires fairness and openness. In practice, White people dominate the discussion while minoritized voices are marginalized. Meanwhile, racist pseudoscientific assertions are treated as if they were legitimate and “scientific” within a context where racist “free speech” carries no risks for Whites but considerable danger for minoritized people, especially Black-British people.**

#### Newspapers have published articles proclaiming whites to be smarter than Blacks

**Gillborn:** Gillborn, David [Professor of Critical Race Studies in Education, Institute of Education, University of London.] “RISK-FREE RACISM: WHITENESS AND SO-CALLED ‘FREE SPEECH’.” *Wake Forest Law Review.* Volume 44. 2009. RP

**Each day the Victoria Derbyshire show invites listeners’ views on a controversial news story. On the day in question, the topic concerned public reaction to statements by Dr. Frank Ellis, a lecturer in Russian and Slavonic Studies at Leeds University in England, who was in the news because students had called for his dismissal. Ellis had been quoted in the Leeds student newspaper expressing the view that Black people, as a group, are substantially less intelligent than Whites and that this inequality is genetically based and, therefore, resistant to ameliorative action through education and other social programs**.40

#### White people use the excuse of free speech to air pseudo-scientific racist views.

**Gillborn:** Gillborn, David [Professor of Critical Race Studies in Education, Institute of Education, University of London.] “RISK-FREE RACISM: WHITENESS AND SO-CALLED ‘FREE SPEECH’.” *Wake Forest Law Review.* Volume 44. 2009. RP

The show opened with a twelve minute prerecorded interview with Dr. Ellis, but rather than begin with an assault on his racist beliefs, the first part of the interview was devoted to his complaint that he was a victim of racism: “. . . [R]acist basically means anything they don’t like. It’s a hate word, calling somebody a racist or a fascist or a neo-Nazi or whatever has become a kind of a racist slur in its own right.” **This view of Ellis as a race victim was repeated by numerous White callers who described attacks on his views as attacks on “free speech.” A famous quotation on the value of “free speech” is often attributed (incorrectly) to the eighteenth century French writer Voltaire: “I disapprove of what you say, but I will defend to the death your right to say it.”42 Several White callers quoted this, or a version of it, as if its mere recitation was proof of something, from Ellis’s presumed right to say whatever he likes, through to an assumption of the inherent worth of his views as against the assumed negative motives of anyone who would try to silence him**. Remember that Ellis faced calls for his dismissal as a racist, but the interview segment of the program began with arguments about “free speech” and not racism. Similarly, Charles, the first caller to be aired after the interview segment, stated: I agree with everything Dr. Ellis has said with regard to colonial legacies . . . . I really don’t know enough about the Bell Curve theory to express an opinion but what I do support is that gentleman’s right to express his opinion as he sees fit. This is not the Soviet Union; this is a country where free speech has been cherished from time immemorial. Susan also quoted the Voltaire line and then repeated Ellis’s assertion that the word “racist” was being used to silence free speech: “If he’s just going to be branded a racist, it just closes down the discussion.” **Some White callers seemed to assume that their commitment to free speech gave them license to wander wherever they pleased**. Charles, for example, euphemistically revisited the centuries-old stereotype about Black physicality44 and, despite the fact that “colored” is widely held to be a racist term in the United Kingdom, the comment went unremarked on by the host: People are different . . . . I was a very good runner but when I came up against the colored guys that I used to run with at school [pause] you know, as soon as we started to develop and get into manhood, they were far stronger and far more superior to me.

#### Racist pseudo-science operates as violence against black families and communities

**Gillborn:** Gillborn, David [Professor of Critical Race Studies in Education, Institute of Education, University of London.] “RISK-FREE RACISM: WHITENESS AND SO-CALLED ‘FREE SPEECH’.” *Wake Forest Law Review.* Volume 44. 2009. RP

**Benjamin, a caller who identified himself as Black, raised an issue that highlights one of the fundamental problems with the idea that unregulated speech is in everyone’s interests because it automatically guarantees equal opportunity to state your case**.45 Quite apart from the fact that certain groups and individuals are granted, or can demand, disproportionate time and status, Benjamin’s call foregrounds the personal distress and anguish caused by racist pseudoscientific rhetoric, which, despite its protagonists’ claim to scientific respectability, operates as symbolic violence, that is, as an aggressive form of hate speech: [A]s I was driving I started listening to Five Live and my children were asking me questions . . . . ‘Dad, what do you think about this?’ And afterwards I had to explain to them that, I mean, comparing your class—even though you are Black—you are still one of the top performers in your class, both children. Ian Hutchby has noted that talk radio has a particular immediacy, a kind of intimacy, which derives from its production and consumption in the domestic sphere: “the voices of ordinary citizens are carried from that domestic sphere into the institutional space of the studio, and then projected back again.”46 **This degree of intimacy heightens the sense of violent invasion created by Ellis’s words, putting Benjamin in a situation where, driving his children to school, he was confronted by their reaction to being told (by a university lecturer on national radio—an apparently authoritative person) that as Black people they are less likely to be intelligent. Benjamin and his children have been assaulted by Ellis’s words: Benjamin had to explain to his children that they are not inferior “even though [they] are Black.” This throws into relief the crass absurdity of White callers who stated that Black people were simply overreacting: in Charles’ words, “some of the minorities are starting to take all these comments far too offensively . . . .”**

#### Pseudo-science operates to discredit minority views – free speech means whites are the only voices that are heard.

**Gillborn:** Gillborn, David [Professor of Critical Race Studies in Education, Institute of Education, University of London.] “RISK-FREE RACISM: WHITENESS AND SO-CALLED ‘FREE SPEECH’.” *Wake Forest Law Review.* Volume 44. 2009. RP

**As the show progressed, it became clear that minoritized voices were effectively denied legitimacy by their White counterparts. Whatever Black callers said and however they tried to present their case, the overwhelming response by Whites was to reject their criticism as being exaggerated and/or irrational.** The host read out the following e-mail from a listener: “Everything Dr. Ellis says is rational, well-founded, and true. . . . It was refreshing to hear him speak his mind. Researched, reasoned, and well put. I found myself standing in my kitchen making a cup of tea and cheering him on.” Several callers made reference to Dr. Ellis’s “expert” status. Martin stated: “We’ve got to assume that Professor Ellis is—has done an amount of study and he’s come to the rational conclusion and he hasn’t just thought it up . . . .” The prized status of rationality is clear here but, in fact, there is little that is rational about these contributions. Note, for example, that the host reads out a message from someone who describes himself or herself “standing in my kitchen making a cup of tea and cheering him on.” This emotional reaction, turning the discussion into a kind of gladiatorial competition, seems hardly rational. Similarly, Martin assumes that Dr. Ellis (whom he incorrectly promotes to the status of professor) has reached his “rational” conclusions after a process of research. But Ellis’s specialty is Russian and Slavonic Studies, not a field known for its focus on the question of IQ and race differences in education: again, the rationality of the assumption is questionable. **We can see here the premium placed on a White assertion of rationality. Interestingly, White contributors were equally keen to label Ellis’s critics as irrational and emotional**. Henry, a caller with an African accent, was the first respondent to directly name Ellis as a racist: You just asked that gentleman, Dr. Ellis, a simple question, if he is a racist? The man could not even bring himself to answer the question. . . . A university should be a place where there is new perspectives to help mankind—not somebody coming up and, and, and—if the man was a politician, he’s not a politician—he’s a racist, a a tool for the far right. Susan, a White caller, felt that Henry’s contribution had simply evidenced her argument: “I think this gentleman [Henry] has just made my point, it’s irrational. You have to be allowed to make your point, in public, and defend your view.” She was no less dismissive a few minutes later when Joseph, a caller who identified himself as a person of color, made the point—very calmly—that Britain already operates with considerable barriers to “free speech” for certain communities. Despite Joseph’s direct appeal to “logic and reason,” Susan simply rejected his view. Her reaction suggests that Susan’s verdict on Henry was as much a reflection of the speaker as the manner or content of his opinion. Joseph: “[T]here are problems with other ethnic groups, still exercising this freedom of speech, they’re igniting terrorism if you like. This has many aspects to it. The same way we apply logic and reason and reasoning on what should apply to freedom of speech for the Muslims, equally that should apply to White people.” Susan: “I don’t think that’s happened, I think it’s skewed the other way and I think a lot of people in our society feel that they are not allowed to speak out in a way that people in the multicultural society are allowed to. It’s one rule for one and one rule for another and I think that’s what’s really at the crux of this problem.” Susan’s final statements are enormously significant. Although she deploys euphemisms, I think her meaning is clear: “a lot of people in our society feel that they are not allowed to speak out” is a claim that suggests White people face censorship while people of color (“people in the multicultural society”) enjoy additional freedoms. **Once again, we have a claim of White victimization. Although this claim is demonstrably false, Susan is correct in stating that the call-in was about more than research on intelligence. As Benjamin’s call demonstrated, and Susan hinted at, the core of the discussion was about racial domination, about the presumed and actual right of White people to continue to peddle racist nonsense about Black intellectual inferiority in the name of “free speech.”**

#### Whiteness structures free speech – it casts free speech as a neutral good, while creating conditions that only let white voices be heard – free speech is no risk for white people.

**Gillborn:** Gillborn, David [Professor of Critical Race Studies in Education, Institute of Education, University of London.] “RISK-FREE RACISM: WHITENESS AND SO-CALLED ‘FREE SPEECH’.” *Wake Forest Law Review.* Volume 44. 2009. RP

“Whiteness at various times signifies and is deployed as identity, status, and property, sometimes singularly, sometimes in tandem. . . . **[W]hiteness has been characterized, not by an inherent unifying characteristic, but by the exclusion of others deemed ‘not white**.’” A key theme in critical race theory has been to document how White identity has been constituted historically by the law where (even after the formal abolition of slavery) being defined as White meant access to a wide range of freedoms and rights that were withheld from other races.48 In one of the most important contributions, Cheryl Harris examines the legal definition of Whiteness and argues that it is a form of property, where property is understood to include rights as well as physical “things”: Although by popular usage property describes “things” owned by persons, or the rights of persons with respect to a thing . . . property may “consist[ ] of rights in ‘things’ that are intangible, or whose existence is a matter of legal definition.” . . . Thus, the fact that whiteness is not a “physical” entity does not remove it from the realm of property.49 Harris goes on to examine the different characteristics and functions of Whiteness, concluding that the most important characteristic is “the absolute right to exclude.”50 She states that “whiteness and property share a common premise—a conceptual nucleus—of a right to exclude. This conceptual nucleus has proven to be a powerful center around which whiteness as property has taken shape.”51 **In the English call-in show, we see Whiteness’ ability to set the boundaries for what counts as legitimate debate. Meanwhile, racist pseudoscience gains yet more airtime and is asserted as brave and true in a debate where White people construct a no-risk, win-win situation for themselves. First, White people remain untouched by the violence of discussions about race and intelligence that construct Black people as automatically deficient. As we saw in the call-in show, many White people see such exchanges as mere debate or discussion; at worst they become a voyeuristic spectacle of insult and assertion. But regardless of how White people experience the discussion, it remains an entirely risk-free environment for them. For example, White listeners to the radio show know that their children do not risk losing educational opportunities because of such talk. Even if teachers mistakenly buy into the nonsense of “IQist” talk, it is highly unlikely that White children will be harmed. White people can listen to debates about IQ, “stop and search,” and DNA profiling safe in the knowledge that they are unlikely to suffer humiliation or wrongful arrest as a result of racial disproportionality**. In fact, Whites stand to directly benefit from such discussions. After all, it will be White people who gain if other Whites believe the arguments and engage in further racist stereotyping of Black people. **In contrast, so-called “debates” about race and IQ can do nothing but harm to Black students: no matter how often the pseudoscience is debunked, the argument provides new fodder for those who wish to explain race inequality by looking anywhere except at the actions and beliefs of White people. And these are not mere academic debates. These processes have real and direct impacts in schools and classrooms.** For example, in 2002 the British government began a concerted focus on ‘gifted’ children, including setting up a National Academy for Gifted and Talented Youth (at a cost of around £20 million).52 **At the time, antiracists warned that education policies which encourage academic selection are almost always likely to institutionalize further existing inequalities of achievement between different ethnic groups and that notions of giftedness and intelligence had an especially racist past**.53 Decades of research, on both sides of the Atlantic, show that whenever teachers are asked to assess their students’ “potential” against some academic or behavioral norm, Black students are typically underrepresented in the highest ranked groups (which benefit from additional resources) and over- represented in the low-ranked groups that typically experience teaching of lower quality, cover less of the curriculum, and, in the English system of “tiered” examinations, are likely to be entered for tests where the very highest grades are simply not available because they are restricted to a “higher” paper reserved for “more able” students.54

### Lallas – A Defense of T Any

#### The use of any in the resolution is universal, as opposed to existential.

**Lallas:** Lallas, Jackson [Debated for Brentwood, liked theory a lot] “A DEFENSE OF T-ANY.” *LADI.* February 2017. RP

**There is a lot of debate about the meaning of the determiner any. In rounds the issue tends to be whether any is used in the universal or existential form.** Consider these sentences: (1) Did you debate any debaters? (2) Any debater could win that round. In (1) any seems to function as an existential. If you debated at least one debater, you would answer yes to the question. However, (2) operates as a universal – pick any debater and they should be able to win the round. **A good rule of thumb for telling the difference between a universal and existential any is the ‘almost test**,’ (See Carlson 1981, and Kadmon and Landman 1993). **Almost can only modify universal determiners** (Kadmon and Landman 1993). Consider: (3) Did you debate almost any debaters? (4) Almost any debater could win that round. We see that (3) is incoherent, but (4) still makes sense. (4) now has a smaller scope than (2), as some debaters would not be able to win the round. **Using the almost test, it’s clear that our current topic is an example of the universal any: (5) Public colleges and universities ought not prohibit almost any constitutionally protected speech. Though awkward, this sentence has a clear meaning**. It reads: “With a small amount of exceptions, constitutionally protected speech ought not be prohibited by public colleges and universities.” **Since the resolution passes the almost test, we know that it uses any as a universal determiner. This demonstrates that the semantics of the resolution favor a generic reading, as we would intuitively expect**. I will note that there is debate about the meaning of a universal any. However, I have not encountered an article advocating for a model allows the affirmative position to be the more accurate reading of the resolution. There is a lot of literature on the semantics of any and some of the articles are 300 + pages long, so it’s possible I missed something. **Another semantic justification for the negative position comes from the ‘widening effect’ of any** (Kadmon and Landman 1993). **Consider this example, slightly modified for clarity from Kadmon and Landman: (6) Owls hunt mice. (7) Any owl hunts mice. Although both sentences are generic, they conclude that (7) rules out exceptions more strongly than (6).** (7) applies to more cases than (6) so it is a broader statement. From an intuitive perspective, this happens because the determiner any emphasizes a statement’s generality. Now consider the following sentences: (8) Countries ought to prohibit the production of nuclear power. (9) Countries ought to prohibit any production of nuclear power. (10) In the United States, private ownership of handguns ought to be banned. (11) In the United States, all private ownership of handguns ought to be banned. (12) Public colleges and universities in the United States ought not restrict constitutionally protected speech. (13) Public colleges and universities in the United States ought not restrict any constitutionally protected speech. There are two observations to be made here that support the negative side of T - Any. The first is that (12) and (13) are analogous to the construction of (6) and (7), so the widening effect indicates that (13) applies to a larger quantity. The second is that the use of any seems to be very deliberate. Our past resolutions (8) and (10) were general statements that omitted universal determiners. The current topic does use a universal determiner, but clearly not for a grammatical reason as it could have easily been written as (12). The choice to use (13) deviates from this trend and highlights the fact that any should increase the scope of the topic. The existential interpretation treats any as superfluous and reads (13) in the same way as (12). (9) and (11) help illustrate why this choice is so significant; we read topics with universal determiners differently than the general versions omitting them. **Thus, it’s clear that the semantics of the resolution mandate the negative interpretation.** Since the focus of the article is about introducing a pragmatic defense of T – Any, I won’t go into reasons why semantics matter for topicality. If you want to learn more about semantics vs pragmatics, Nebel’s “The Priority of Resolutional Semantics” and Overing and Scoggin’s “In Defense of Inclusion” provide great starting points. With semantics out of the way, I’ll now offer some pragmatic arguments in favor of my position.

#### Specific plans on this topic cause massive ground loss – there are few enough neg args as is.

**Lallas:** Lallas, Jackson [Debated for Brentwood, liked theory a lot] “A DEFENSE OF T-ANY.” *LADI.* February 2017. RP

**Whenever the aff strategically chooses an advocacy, it is a given that aff ground improves. The aff gets to exclude many neg positions and defend the best slice of the resolution. There’s also the frontlining advantage in only having to defend one plan while negatives need to be ready for a variety of cases.** On many topics this is fine or even required. For instance, whole res debate could be impossibly vague or hard to defend. The neg could also get a ground boost in return to even out these advantages. Perhaps the aff plan will give the neg DAs about implementation, is too narrow so that an advantage CP easily solves it, or strengthens links to core generics. **But this is not the case on the current topic. Specification dramatically improves aff ground while limiting neg options**. As this section header suggests, there are few case negs in quantity and quality. Allow me to explain. **Almost every neg position comes from one of three topic areas: hate / offensive speech, protest, or generic kritiks of free speech. The first is by far the broadest category, encompassing the hate speech DA, revenge porn DA, title IX DA, offensive speakers DA, alt right DA, anti-Semitism DA, counter-speech kritiks, positions about safe spaces, etc. Negatives occasionally read positions against protest, most prominently the endowments DA and heg DA. Lastly there are some kritiks of the concept of free speech itself, the cap K being the best example. That’s pretty much it**. Despite the current topic’s broadness, my experience researching, judging, coaching, and looking through the NDCA wiki indicates that there are very few arguments beyond these in favor of negating. Many arguments against free speech are already excluded because the resolution includes the words “constitutionally protected.” That’s not to say the remaining neg arguments are bad – some like hate speech are very well defended in the literature. **What’s worrying is that in the big picture there are only a few ways to argue against free speech. These lines of argumentation quickly dissipate when talking about specific speech. This effect skews ground in favor of specific affs. The quality of neg ground is inversely correlated to the aff ’s instead of roughly equivalent. Consider having to defend absolute free speech. There are good arguments in favor of it – the marketplace of ideas and individual liberty – but also strong counter arguments such as libel, hate crimes, and harassment. Now narrow that to constitutionally protected speech. The same market place and liberty arguments apply, but the objections have either disappeared or become much weaker. For instance, hate crimes and harassment have been narrowed to just hate speech while the libel objection is altogether gone**. Now narrow it again to just constitutionally protected speech in college newspapers. I would argue that the ground in favor of this speech is even stronger than the ground favoring absolute or constitutionally protected free speech.

#### The newspapers aff in particular is unfair.

**Lallas:** Lallas, Jackson [Debated for Brentwood, liked theory a lot] “A DEFENSE OF T-ANY.” *LADI.* February 2017. RP

**Speech in newspapers serves vital, easily articulable functions such as the ability to criticize institutions, share events with other students, give people a voice, etc. These impacts are much more powerful and persuasive than the philosophical benefits of free speech in general. In contrast, the arguments against this speech are much weaker. There’s only a small link to hate speech style arguments about offensive publications** and potentially a small link to kritiks of free speech.

#### No link to Aff flex – whole res gives them great ground – most people think free speech is good.

**Lallas:** Lallas, Jackson [Debated for Brentwood, liked theory a lot] “A DEFENSE OF T-ANY.” *LADI.* February 2017. RP

The ground argument thus far is still incomplete. It could be the case that specification is necessary to offset bad aff whole res ground or general disadvantages to affirming. More specific variants of these arguments, such as the pics objection, will be covered in a later section. For now I’ll address this concern at the general level. First note that the work done above shows that the negative incurs a substantial ground loss when the aff violates T – Any. When comparing the difficulty of affirming to the limitation of neg ground, the neg comes out ahead. **Affirming may not be easy but negating against these affs is too hard to justify the tradeoff**. However, this objection needs to be covered in more depth. If the ground loss from violating T – Any turned out to not be that bad then the weighing argument would not hold. M**y next response to this argument is that the premise that whole res leaves the aff with bad ground does not apply. As a society we overwhelmingly favor free speech and there are years of defending it in the literature. Things like hate speech have been heavily covered through controversial Supreme Court cases in the past (Skokie comes to mind) and free speech on college campuses has been a big topic in the literature from the 90s to the present. It seems clear that the aff has plenty of arguments to choose from and also that there has been a dialogue among scholars which can help answer common negative positions.**

#### Getting better at debate solves the Aff flex terminal impact.

**Lallas:** Lallas, Jackson [Debated for Brentwood, liked theory a lot] “A DEFENSE OF T-ANY.” *LADI.* February 2017. RP

**There is also a side bias component to this argument. Is affirming is hard enough that the aff needs to be abusive to win?** I think this question is worthy of an article by itself given how prevalent it is, so for the sake of brevity I won’t go into too much depth on it here. **Firstly, I think this response misdiagnoses the problem. Affirming is hard because it requires more work to write a good aff and know how to execute it well. Much fear about affirming could be alleviated by doing more work.**

#### Side bias flips Aff on this topic

**Lallas:** Lallas, Jackson [Debated for Brentwood, liked theory a lot] “A DEFENSE OF T-ANY.” *LADI.* February 2017. RP

I also think that the difficulty often comes from non-substantive concerns. Theory and Kritiks have been classically hard strategies for the aff to deal with. It’s layering more than any neg substantive advantage that causes the problem. Specific advocacies are a misguided way to address the issue. **Lastly I don’t think that affirming is that difficult on this topic. Almost any theory interpretation against a whole res aff is frivolous and stock aff arguments interact well with kritiks. The set of neg arguments on substantive is already not super expansive which makes it very manageable to prep them out. The high quality whole res ground mentioned earlier also helps answer this argument.** Side bias statistics would be helpful in gauging the accuracy of this argument.

#### Their interp explodes limits – there are literally thousands of speech codes they could choose to overturn, different areas of campuses, and more.

**Lallas:** Lallas, Jackson [Debated for Brentwood, liked theory a lot] “A DEFENSE OF T-ANY.” *LADI.* February 2017. RP

**LD** **has had its share of deeply under-limited topics, such as environmental protection vs resource extraction, nuclear power, and beneficence. But under the affirmative interpretation, this topic is just as bad if not worse than many of them. The existential reading includes cases such as ones that specify a single type of speech or mode of communication. Even if we apply further limits, such as requiring the aff advocacy to get rid of a specific speech code, there are still far too many affs. The Foundation for Individual Rights in Education (FIRE) provides some helpful statistics that demonstrate the scope of the resolution. In their 2017 survey of speech codes, they reviewed at 345 public colleges. 33.9% of these schools had a red light rating**. Using the data provided, we can also see that about 59% of public colleges surveyed had a yellow light rating. To put this in perspective we need to understand the methodology behind the survey. FIRE defined a red light rating as: “A red light institution is one that has at least one policy both clearly and substantially restricting freedom of speech, or that bars public access to its speech- related policies by requiring a university login and password for access.” A yellow light rating is slightly more complicated: “A yellow light institution maintains policies that could be interpreted to suppress protected speech or policies that, while clearly restricting freedom of speech, restrict only narrow categories of speech . . . Yellow light policies are typically unconstitutional, and a rating of yellow light rather than red light in no way means that FIRE condones a university’s restrictions on speech. Rather, it means that in FIRE’s judgment, those restrictions do not clea rly and substantially restrict speech in the manner necessary to warrant a red light rating.” But maybe these limits aren’t so bad – what if these universities only have one policy that caused the red or yellow light rating? These are the assumptions that the aff interpretation would need to make and they are far too generous. **Realistically, these schools have multiple codes that FIRE takes issue with. There are also roughly 1600 public colleges in the United States. The survey only looks at 345. When you combine these facts, the number of possible affs just about speech codes is likely in the hundreds and maybe thousands. Keep in mind that speech code affs are only a subset of those allowed by the aff interpretation**. In reality there are more ways to limit content of speech and modes of communication, a common example on this topic being free speech zones. The aff interpretation would allow for these too, which makes it even more under-limited. **There’s already plenty of literature about the impacts of under-limited topics, but to name a few: rounds have less clash and substantive engagement, new debaters have a harder time joining the activity, negatives design strategies that moot the aff as an alternative to doing research, more topicality debates, etc.**

#### The PICs offense is non-unique – any theoretical reason a PIC is bad is a reason a super small plan is bad

**Lallas:** Lallas, Jackson [Debated for Brentwood, liked theory a lot] “A DEFENSE OF T-ANY.” *LADI.* February 2017. RP

**One argument that has exploded in popularity as a response to Nebel T and now T – Any is the notion that the neg can read pics against whole res affs**. The reasoning is as follows: “If the aff is whole res, then the neg can easily pic out of 99% of the case. For instance the neg could read a pic only defending one speech code.” **One problem with this argument is that it is self-referential. If the aff would not be able to engage a pic defending only a single speech code, how should the neg be expected to engage an aff that criticizes just one code? In essence, the abuse story that the pic argument paints is that neg pics will be under limited and have little ground to engage them on. The same reasoning applies to specific affs.**

#### PICs are less unfair – smart Affs have preempts to them, and narrow PICs contradict other arguments, which make grouping in the 1AR easy.

**Lallas:** Lallas, Jackson [Debated for Brentwood, liked theory a lot] “A DEFENSE OF T-ANY.” *LADI.* February 2017. RP

**Given how prevalent this argument is, it’s controversial to suggest that the abuse caused by a specific aff and reading a pic are similar or roughly equal**. So I’ll spend some time going into the specifics. **First consider potential ground loss. Specific affs significantly limit neg ground; the neg can only defend one type of speech restriction. This is the same for a 1AR answering a pic – only one type of speech is relevant. A smart aff will also include arguments in their case that indict any restrictions or ban of speech in general to help offset ground loss. Also keep in mind that there are only few arguments in favor of the pic, since it is so similar to the aff, so there won’t be too many different arguments to answer in the 1AR.**

#### If the PICs debate is somewhat close, vote neg – there’s a 100% chance I had to debate against an abusive Aff, and it’s not guaranteed that I would have read a PIC.

**Lallas:** Lallas, Jackson [Debated for Brentwood, liked theory a lot] “A DEFENSE OF T-ANY.” *LADI.* February 2017. RP

**Since the abuse from a specific aff and pic are comparable, the pics argument could actually justify T – Any. It seems like it would be a much better norm to not read the specific aff and create a chance that the round is fair. After all, the neg does not have to read a pic.**

#### This is potential abuse – the fact that an interp might increase the chance of skep being run doesn’t make it a bad interp

**Lallas:** Lallas, Jackson [Debated for Brentwood, liked theory a lot] “A DEFENSE OF T-ANY.” *LADI.* February 2017. RP

**The second problem with the pics argument is that it relies on a faulty line of justification. The argument is essentially ‘because the neg could read an abusive argument, the aff should get an advantage.’ The neg could also read multiple condo, skep, etc. Does the aff need an advantage for the chance that those things happen too? The pics argument wanders too far into the territory of potential abuse.**

#### Turn – they incentivize MORE PICS – negs that don’t have prep against random Affs will go for word PICs or process counterplans.

**Lallas:** Lallas, Jackson [Debated for Brentwood, liked theory a lot] “A DEFENSE OF T-ANY.” *LADI.* February 2017. RP

**Furthermore, reading an aff that violated T – Any would only increase the incentive to read pics. Because of the lack of neg ground and high chance that the neg won’t be able to prep the aff, the neg has every incentive to read word pics or random process pics. Even if the neg doesn’t read a pic, the ground skew still incentivizes reading a position that moots the aff and mimics the abuse of pics.**

#### Disclosure and solvency advocate don’t solve limits – it’s still a ton of random Affs to prep.

**Lallas:** Lallas, Jackson [Debated for Brentwood, liked theory a lot] “A DEFENSE OF T-ANY.” *LADI.* February 2017. RP

A classic and reasonable response to any limits argument, this argument usually goes as follows: “**The aff counter interpretation requires a solvency advocate and for the aff case to be disclosed,** which ensures that the neg has ample ground and can prepare before the round.” One immediate issue is that debaters try to get away with too much from this argument. **The case neg scarcity argument is unaddressed. True, there’s a greater chance that the neg will know what arguments to prep before the round. But those arguments are still limited in quality and quantity**, so the disclosure and solvency advocate requirements don’t solve for the neg ground loss inherent to violating T – Any. The debate about whether or not these requirements solve the limits concern requires closer inspection. **One obvious case that these arguments do not solve is new affs. New affs are usually not disclosed, and if they are the disclosure is only minutes before a debate**. This leaves the negative with not nearly enough time to prep and is particularly concerning in later elim rounds, where breaking random advocacies can be used as a tool to deliberately prevent the neg from engaging. **Outside of new affs, disclosure and solvency advocates will mitigate but not solve limits concerns. Before a tournament, most debaters don’t meticulously comb the wiki and prep out every aff that they could hit. And it would be wrong to make them – high school students shouldn’t have to dedicate their whole lives to debate**. Most prep against specific affs occurs during tournaments. **Even if disclosure gives the neg a 30 – 60 minute window to prep before round, there will still be a large prep skew in favor of the aff**. **The neg will certainly have an easier time debating a disclosed aff with a solvency advocate, but those requirements won’t solve all the limits abuse.**

#### Even if their Aff is uniquely important to debate, limits control the internal link.

**Lallas:** Lallas, Jackson [Debated for Brentwood, liked theory a lot] “A DEFENSE OF T-ANY.” *LADI.* February 2017. RP

This argument is another common response to most T arguments, so naturally it applies to T – Any. **Aff debaters will respond to T by arguing that: “Case [x] is important to talk about and adds educational value to the activity**.” I agree with this argument in spirit. There are a lot of important decisions and policies to talk about, and I’m sure many of the affs that violate T – Any fall among these. **The problem with this argument is that it does not justify why allowing these specific advocacies is a good way to go about learning these issues. In essence, this argument talks about the impact of learning about their position but skirts doing the link work explaining how their interpretation achieves that goal. This response can easily be link turned. If you don’t have the prep to engage their aff, due to limits or poor quality ground, then the in round discussion created is probably not that valuable. The round could teach both debaters more by having them debate on an issue with equitable ground, allowing clash and creating more strategic decisions**

#### People are just forced to generics under their interp and never really debate the Aff.

**Lallas:** Lallas, Jackson [Debated for Brentwood, liked theory a lot] “A DEFENSE OF T-ANY.” *LADI.* February 2017. RP

**A deeper concern is that these affs incentivize bad engagement. An example of this was the 50 states counterplan seen commonly against plans last year. Instead of creating an actual discussion of the aff, rounds have been bogged down by random implementation issues and cheap shot neg strategies. I find that many neg positions read in response to these affs are about as engaging as moral skepticism.** The incentive to read word pics and uplayer I mentioned in response to the pics objection also applies here.

#### The free speech and journalism Affs aren’t educational – they’re based on nuances of administrator concern

**Lallas:** Lallas, Jackson [Debated for Brentwood, liked theory a lot] “A DEFENSE OF T-ANY.” *LADI.* February 2017. RP

**On another level, there is not much educational value to researching objections to many affs that violate T – Any. Take the free speech zones aff and journalism aff as examples. Most of the arguments in favor of those policies are based on administrative or institutional concerns. Schools don’t want their image tarnished in a paper or to have a public safety hazard during a protest. We don’t learn that much by reading about these arguments, and they also transfer over to debate poorly.**

#### Whole res doesn’t get stale, since there are various nuances – it’s also non-unique, since people will just read the same cheaty plans.

**Lallas:** Lallas, Jackson [Debated for Brentwood, liked theory a lot] “A DEFENSE OF T-ANY.” *LADI.* February 2017. RP

**Some people argue that the topic could go stale if we adopt an interpretation such as T – Any, which admittedly puts a lot of restrictions on what the aff can defend. The argument goes:** “There won’t be a variety of positions to defend or research, so people will get bored of doing the same thing over and over.” **You should be skeptical of this argument from the outset. What people find fun in debate is highly subjective.** I enjoyed theory debate but would certainly not want it to be in every round. **This argument is also empirically denied. Take the example of sports – the rules of the game practically never change but people still enjoy playing. Within debates there can still be a ton of variety under whole res constraints. The aff can choose different frameworks and advantages, while the neg can respond with any combination of the arguments I listed earlier and more. There are strategic incentives to innovate, as talked about with new affs, so it’s likely debate wouldn’t get too stale. Lastly, the staleness argument is not unique. The domestic violence plan was ubiquitous on the jan feb last year and led to some pretty boring rounds.**

#### They have plenty of Aff flexibility as is – they can read differnet Affs and advantage areas.

**Lallas:** Lallas, Jackson [Debated for Brentwood, liked theory a lot] “A DEFENSE OF T-ANY.” *LADI.* February 2017. RP

**Like the staleness objection, this argument relies on the premise that the aff will have to defend the same thing every round. It is usually explained as: “If the aff is forced to defend only whole res, then it will be crushed by prepped negatives who can read anything.** There needs to be flexibility in advocacies available to the aff.” **One issue with this response is that it doesn’t translate well to the topic. There’s a fairly limited amount of negative ground. This makes it equally likely that the aff will be highly prepped for whatever the neg reads and also allows the aff to gear the AC strategically to be ready for those positions. But this argument again underestimates the variety still possible in whole res debate. The aff can choose any framework, advantage, and underview combination best for each round. New weighing and framing arguments can easily take the neg off their prep. Evidence comparison can be prepped for key arguments in the AC. True; a bad whole res case might almost always lose to the negative. But the same could be said about a bad plan.** A prepped aff that knows how to execute their case can easily offset the lack of flexibility. From my own observation, whole res cases seem to do pretty well on the topic.

#### Their flex goes too far – limits and ground outweigh.

**Lallas:** Lallas, Jackson [Debated for Brentwood, liked theory a lot] “A DEFENSE OF T-ANY.” *LADI.* February 2017. RP

**Lastly, there’s a deeper question about what makes a legitimate flexibility argument. Nibs, multiple condo, multiple pics, 10 theory shells, etc would all add tremendously to neg flexibility and yet these are obviously bad norms. That’s because flexibility is a balancing act, a position can be justified on the basis of flexibility if it doesn’t significantly disadvantage your opponent. The limits and ground arguments from the second section demonstrate why we should reject this form of flexibility.**

### Davidson

#### The study isn’t reliable – it’s literally a senior class project.

**Davidson:** Davidson, Alexander [Student, California Polytechnic State University] “The Freedom of Speech in Public Forums on College Campuses: A Single-Site Case Study on Pushing the Boundaries of the Freedom of Speech.” June 2016. RP

**This study was done as a senior project at California Polytechnic State University. It is a single-site case study and is strictly done with California Polytechnic State University as the test subject;** however, the study may be applicable to other state universities in California as well as out of state universities, depending on state laws and university practices. The study will include interviews from Dr. Ronald Den Otter, Dr. Bill Loving and an unnamed university administrator.

#### Their study goes neg – there are time, place, and manner restrictions on speech at the university they studied.

**Davidson:** Davidson, Alexander [Student, California Polytechnic State University] “The Freedom of Speech in Public Forums on College Campuses: A Single-Site Case Study on Pushing the Boundaries of the Freedom of Speech.” June 2016. RP

**There are, however, regulations to the freedom of speech on California Polytechnic State University’s campus**. The right of free expression is a guaranteed right, so long as it does not “interfere with University functions, imperil public safety, obstruct or damage University facilities, or cause individuals to become audiences against their will” (University Organization and Campuswide Policies). **This means that there can be content-neutral restrictions on the speech that takes place on the University’s campus, but there cannot be content-based restrictions made. Content-neutral restrictions deal with time, manner and place - even if the government cannot ban a specific speech, there are times where that speech would be unacceptable. California Polytechnic State University has this in place to preserve the safe operation of the campus.**

#### The study is awful, and their author knows it.

**Davidson:** Davidson, Alexander [Student, California Polytechnic State University] “The Freedom of Speech in Public Forums on College Campuses: A Single-Site Case Study on Pushing the Boundaries of the Freedom of Speech.” June 2016. RP

**One of the major limitations for this project is that it is a short-term study that will take place over two quarters (20 weeks). With more time, more information could have been gathered that mirror situations that have taken place at California Polytechnic State University to showcase that this either is or is not an isolated event. Another limitation is the lack of resources available. For example, there are experts in the field of study, mainly constitutional theorists, which could have provided more insight; however, I do not have the money, or means, to get in contact with many of these individuals** because many of them are not located within the Central Coast of California.

### Keller

#### Protests and speech on campus kills donations – University of Missouri proves.

**Keller:** Keller, Rudi [Contributor, Columbia Daily Tribune] “University of Missouri fundraising takes $6 million hit in December as donors hold back funds.” *Columbia Daily Tribune.* February 2016. RP

**New pledges and donations to the University of Missouri fell $6 million in December as the campus weathered the fallout of public discontent that also threatens to erode the school’s finances via state support and tuition revenue**. December combines Christmas generosity and the promise of tax deductions on returns due April 15, making it a prime time for fundraisers at major institutions. In December 2014, new pledges and donations for all campus activities including athletics totaled $19.6 million, according to figures compiled by the university’s advancement office. Only $13.6 million came in this December, a drop of about 31 percent. The figures represent new commitments and donations that are not given in fulfillment of previous pledges, Vice Chancellor of University Advancement Tom Hiles said. For the three complete months since campus protests made international news in November, new pledges and donations to MU declined by about $7.4 million. Along with the decrease in new support, pledges totaling about $2 million were withdrawn, Hiles said. About 10 were gifts of $25,000 or more, including one for $500,000, he said. Total new pledges and donations in fiscal year 2015 totaled $147.6 million, down from a record $164.1 million in fiscal year 2014. The advancement office has fielded more than 2,000 calls from people upset with the university and tracks them by topic on a heat map. “It ran the gamut from” Assistant Professor Melissa “Click to Planned Parenthood to just a general lack of leadership,” Hiles said. “‘**Who’s in charge? Are the students running it?’ If I heard inmates are running the asylum one more time I was going to** ... . Those were the general categories.” **Student demonstrations over racism and marginalization on campus made international headlines** after the Tiger football team announced it would boycott athletic activities in support of a hunger strike by Concerned Student 1950 member Jonathan Butler. Athletic donations also have dipped, including a 68 percent drop in December cash gifts compared to December 2014 and a 38 percent decline in new pledges and donations as tallied in Hiles’ office during November, December and January. The Athletic Department’s decreased fundraising over that period — $1.3 million — is included in the total campus decline of $7.4 million. Giving by smaller donors, defined as those who give less than $10,000, declined by about 5 percent in the three-month period, with drops in November and December somewhat offset by a January increase in giving. Small donors gave or pledged $4.76 million in the period, down from $5.02 million the previous year. “We definitely got hit in our annual fund and other points,” Hiles said. “It was rough because normally December is our best month.” While his office fielded calls, Hiles said staff members researched callers who said they would never donate again. The result, he said, was “about a 90 percent correlation with people who ... have never given.” The final word on other financial issues is unresolved. A House committee already has denied the university a portion of the budget increase allocated to other state colleges and universities. Chairwoman Donna Lichtenegger, R-Jackson, cited Click’s continued employment and a demonstration that interrupted a UM System Board of Curators meeting for the cut. At a Wednesday hearing of the Joint Committee on Education, interim MU Chancellor Hank Foley said figures show an anticipated enrollment drop of 900 students, which roughly equates to a $20 million loss of tuition revenue. For the year to date overall, new pledges and donations are well ahead of the previous fiscal year because Rich and Nancy Kinder pledged $25 million in October to launch the Kinder Institute on Constitutional Democracy. Without that gift, the year-to-date total would have decreased by $8.7 million. “We are not actually off in terms of donations,” Foley told the joint committee. “In terms of overall donations, we are doing quite well.” Foley said he has “spent a fair amount of time speaking to donors.” The university launched its “Mizzou: Our Time to Lead” campaign Oct. 8 with a goal of raising $1.3 billion; several events were linked to Homecoming weekend at MU. **Protests by Concerned Student 1950 also started that weekend when several students blockaded the Homecoming parade and stopped then-UM System President Tim Wolfe’s car. It was another problem for an administration already beset by troubles, including faculty members and deans upset by former Chancellor R. Bowen Loftin’s administrative style**. Graduate assistants were rebelling over a loss of health insurance coverage, and the bad blood between Wolfe and Loftin was being played out in closed curators meetings. **Wolfe resigned on Nov. 9, and Click was caught on camera later that day trying to push a videographer away from the protest site and calling for “some muscle” to help**. Click has dominated headlines since Nov. 9, with 117 lawmakers signing letters calling for her dismissal and the curators putting her on paid suspension while her actions are investigated.

### The MN

#### Alumni will exert pressure to condemn hate speech – Vassar proves.

**The MN:** The Miscellany News [Official campus newspaper at Vassar College] “Admin has responsibility to effectively counter hate speech.” *The Miscellany News.* February 2016. RP

**In light of the campus climate surrounding the BDS resolution and the Israel-Pales tine conflict, a string of antisemitic and Islamaphobic hate speech has been circulating the anonymous online forum of Yik Yak. In the past two weeks, President Hill and Dean Roellke responded to these incidents via campus-wide emails that addressed this toxic and antagonistic social media behavior, as well as Vassar’s campus climate in general**. Dean Roellke’s email, sent on Feb. 16, ex pressed his concern for the way that a small number of people within the Vassar commu nity had been acting and urged these voices to stop treating their classmates and peers at Vassar with “contempt and intolerance.” The email continued by quoting a passage from the Vassar College Student Handbook regarding students’ obligation to be respect ful and accepting of their community at large. While the emails sent out by President Hill and Dean Roellke do acknowledge the hate speech occurring throughout campus, we at The Miscellany News believe this initial response by the Administration was insufficient. The emails’ accusatory tone effectively condemned the behavior of the student body but did not offer any tangible, meaningful solutions moving forward. Dean Roellke’s email in particular read as condescending, a chastisement that offered no concrete help or plan. We at The Miscel lany News believe that these campus climate problems cannot be solved on their own and require the whole-hearted support of the Administration Toxic exchanges featuring antisemitism and Islamophobia have also taken hold in spaces outside of campus. The discourse of BDS can not be boxed in by the confines of Raymond Avenue. A host of articles, including a recent piece from The Observer written by a Vassar alumni, and a piece written a few days ago by the Daily News entitled “Hatred on the Hudson” have discussed the BDS resolution climate and labeled Vassar as an antisemitic institution whose administration is in sup port of said ideals. **The College is experiencing a barrage of outside scrutiny from alumnae/i in the form of letters, emails and social media.** The Ad - ministration calls for us to all “get along” on campus, yet we wonder what this means for those voices that continue to pour in from off campus. Where do the alumnae/i voices and opinions lie in this dialogue and who is regulating them to make sure discourse re mains accessible and safe? We acknowledge that this outside pres sure from alumnae/i and external publica tions puts the Administration in a difficult position both from a moral and a financial standpoint. It is likely that they may not know how to act and navigate through this complex and loaded dialogue that affects multiple moving parts within the campus and network psyche. Still, their initial confusion should not result in general inaction. Despite pressure from the alumnae/i, the Administration’s goals should be to protect the student body that populates the school right now, protect ing those students who have been hurt and victimized by the spiteful discourse of BDS itself. Although it is impossible to eliminate on line forums such as Yik Yak, students and administrators must make attempts to re spond to the damage that this anonymous discourse can cause. Much of the recent controversy has sur rounded visiting speakers who deliver po larizing lectures on campus. Students can be unaware of these extreme opinions and feel shocked and insulted in the lecturer’s aftermath, leading to extreme reactions and a climate of anger on campus. To help placate this, we at The Miscellany News propose an administrative system in which orgs that feel strongly about a visiting lecturer would be able to put forth a short statement or opinion that would appear on the campus calendar next to the event list ing. With research, it is not difficult to un derstand a speaker’s fundamental beliefs; however, this information needs to be more easily accessible to students so that they know who has been invited to speak before the lecture begins. Orgs that feel passionate ly in favor of or against a lecturer can then use their research to serve as mediators be tween the speaker and the general student body, thus creating a stronger dialogue sur rounding the event and opening up spaces for students to respond safely. In addition to this written input about controversial lectures, it would be valuable for the orgs sponsoring these events to host pre- or post- lecture discussions. We believe that post-lecture discussions, as Students for Justice in Palestine recently offered, give students the opportunity to debrief and dis cuss what they have just heard in a construc tive way. Though conversation is not comparable to anonymous hate speech, providing these outlets for discussion promotes an atmo sphere of constructive exchange that does not encourage the same hostility anonymous social media does. **We believe that the responsibility of the Administration lies in taking immediate action to respond to incidents that have al ready occurred**. Punishment is not an option for the anonymous perpetrators. What mat - ters most now is focussing on the victims of charged attacks instead of sending emails that accomplish little beyond chastising the entire student body. We need an administra tion that isn’t afraid to take meaningful mea sures to protect its students. On Monday morning, the Bias Incident Response Team sent out an email that an nounced the creation of upcoming spaces for student sharing and healing. We at The Miscellany News believe that this type of restorative space is a step in the right direc tion. These spaces focus on the victims and on recovery, dealing with the hate speech inci dents in a way that is constructive. Beyond this, it is important to remind students that are not necessarily comfortable with sharing in a public space of the resources that are available to them, such as CARES and The Listening Center. **The anonymous hate of recent weeks has contributed to a toxic campus environment that all members of the Vassar community have a responsibility to respond to**. As we work towards respectful discourse, we must analyze the problems that exist and do what is in our power to work towards a safer cam pus. Michael Weiner '91 says: The connection of alumni to Vassar is as strong, or stronger, than that of current students. We worked for our degrees and paid for them too. We have worn our affiliation to the College proudly, until now. As long as Vassar continues to ask for alumni donations, participation in on campus/off campus programming and help in interviewing prospective students and promoting the Vassar brand, we have a seat at the table. Get used to it, soon you will be one of us. One of those Alumni '05 says: The people acting outraged about Vassar don’t understand what the school has been like for decades – it has always been a place where viewpoints from merely radical to extravagantly ridiculous have been welcomed. Sometimes this plays out to such an extreme that Vassar becomes an unwitting parody of itself, but it also can be one of the great aspects of the university. You have to appreciate it for what it is and maintain a bit of a sense of humor about it. So while I wholeheartedly disagree with the BDS crowd, I’m neither surprised nor particularly disappointed. I do hope there are those on campus who are able to effectively articulate, not unabashedly pro-Israel notions, but at least ones that acknowledge the nuances of the reality there. In any case, let people develop ideas and fight for them – and let those ideas live or die on their merits (or lack thereof if descriptions of this Professor Puar’s lecture are accurate). That’s what discourse is about. Now, what does worry me is this growing emphasis on ‘safe’ discourse. For example, I was extremely disappointed to see Vassar is falling victim to the trigger warning brigade. Or, to borrow from this article (speaking of becoming a parody of yourself): “On Monday morning, the Bias Incident Response Team sent out an email that announced the creation of upcoming spaces for student sharing and healing.” This type of thing is what takes a student body known for its proud advocacy of ideas and turns it into a bunch of timorous adolescents. Vassar at its best is a place where people aren’t afraid to speak, be challenged, and challenge. Being sheltered from ideas, books, or viewpoints you deem hurtful is not ‘safe’ in my book, it’s ‘sanitized’. Paul Mansour '87 says: This excellent editorial poses an important question: “Where do the alumnae/i voices and opinions lie in this dialogue and who is regulating them to make sure discourse re mains accessible and safe?” Americans are more more and committed to fair speech as a replacement for so-called “free speech”, which is nothing more than a few dusty words in a 100 year old document written by privileged dead white men. “Free speech” is like most constitutional rights, a negative right – the right to be left alone and free from government interference. As President Obama has rightly noted, the constitutional framers did not go far enough with respect to rights. What we need are positive rights, the right to a good job, a house, healthcare, and perhaps most importantly, the right to a safe space, free from harmful thoughts and speech. Fair speech requires regulation. Is is horrifying that alumnae/i speech is allowed unregulated on campus, just like the disastrous Citizens United case. Vassar should follow the lead of progressive companies like Twitter and institute a “Trust and Safety Council”. This body would centralize the regulation of all outside speech, providing a single resource for students to voice their complaints. It could write fair rules for all speech originating off campus, ensuring that the entire campus is a safe space. All across Europe, “free speech” is being reigned in to provide safe spaces for the marginalized and the disenfranchised, When has Europe ever been wrong? Who is more in need of protection than the typical Vassar student? It is distressing that Vassar President Hill hides behind the euphemism of “free-speech” in a misguided attempt to defend the patriarchal privilege of the past. Ruth **Manfredi '90 says: Hundreds of alumni are appalled by the lack of tolerance** on Vassar’s campus. We believe in respectful debate, critical analysis and freedom of speech. **We do not believe that a small group of faculty, students and speakers should use “freedom of speech” as an excuse for hate speech. We believe that every single Vassar student has the right to feel comfortable** at Vassar **and not be discriminated against** or ostracized based on race, religion, gender, or sexual orientation. **We are working** with students, faculty, AAVC and the Administration **to support change** and create an environment of tolerance at Vassar.

### Moreno

#### Donors will withdraw funds for colleges that allow hate speakers because they dislike campus violence – UC Berkeley proves.

**Moreno February 2017:** Moreno, Amy [Contributor, Truthfeed] “BREAKING : UC Berkeley Loses Major Donor.” *Truthfeed.* February 4, 2017. RP

**Scott Adams, the creator of the popular comic strip Dilbert got his MBA at UC Berkeley and has remained a top donor, both in money and time. After the recent riots, where Democrat terrorists “Antifa” set fires, vandalized property and beat Trump supporters unconscious, Adams had pulled his funding from the troubled liberal university**. Here’s the best article you are likely to read about the absurdity of calling ANY American president Hitler. This is the sort of persuasion (sprinkled with facts) that can dissolve some of the post- election cognitive dissonance that hangs like a dark cloud over the country. Share it liberally, so to speak. You might save lives. Speaking of Hitler, **I’m ending my support of UC Berkeley, where I got my MBA years ago. I have been a big supporter lately, with both my time and money, but that ends today. I wish them well, but I wouldn’t feel safe or welcome on the campus**. A Berkeley professor made that clear to me recently. He seems smart, so I’ll take his word for it. I’ve decided to side with the Jewish gay immigrant who has an African-American boyfriend, not the hypnotized zombie- boys in black masks who were clubbing people who hold different points of view. I feel that’s reasonable, but I know many will disagree, and possibly try to club me to death if I walk on campus. Yesterday I asked my most liberal, Trump-hating friend if he ever figured out why Republicans have most of the Governorships, a majority in Congress, the White House, and soon the Supreme Court. He said, “There are no easy answers.” I submit that there are easy answers. But for many Americans, cognitive dissonance and confirmation bias hide those easy answers behind Hitler hallucinations. I’ll keep working on clearing the fog. Estimated completion date, December 2017. It’s a big job.

### Zeiner

#### Lawsuits against speech zones damage the college’s credibility and harms funding.

**Zeiner:** Zeiner, Carol L. [Assistant Professor of Law, St. Thomas University School of Law, Miami Gardens, Florida; former College Attorney for Miami-Dade Community College (now Miami-Dade College).] “Zoned Out! Examining Campus Speech Zones.” *Louisiana Law Review.* Volume 66. Fall 2005. RP

**Incidents involving campus speech zones' are frequently followed by a contentious battle involving the university, the students, and sometimes a free speech advocacy organization.** Civil activist groups, such as the FIRE, the ACLU, and the Rutherford Institute, often become involved. **Regardless of whether a lawsuit is filed, the confrontation is often followed by a media campaign initiated by those opposing the university's policy. The media campaign will likely disparage the university, accusing it of willfully disregarding the United States Constitution and the free speech rights of its own students. This strategic tactic is intended to focus negative attention on the university, with the goal of causing public embarrassment. The media campaign generally succeeds in achieving this goal. Such a campaign can have serious adverse effects on a public institution that depends on state appropriations, grants, and donations for its funding**.19 It can also negatively impact the reputation of the university and harm its ability to recruit students and faculty.2 0 **Clearly, use of campus speech zones by universities is a "hot topic," one which will likely continue to be the subject of controversy and litigation.**

#### Speech zones save money – cleanup and surveillance is cheaper within one set area as opposed to the entire campus.

**Zeiner:** Zeiner, Carol L. [Assistant Professor of Law, St. Thomas University School of Law, Miami Gardens, Florida; former College Attorney for Miami-Dade Community College (now Miami-Dade College).] “Zoned Out! Examining Campus Speech Zones.” *Louisiana Law Review.* Volume 66. Fall 2005. RP

All of these emotions are occurring during an era when the respective rights and responsibilities of the university, its students, and the community are already in flux and likely to change further. **Moreover, the last several years have been times of especially scarce state funding for public higher education, during which the cost of tuition is rising at a rate higher than inflation. This raises questions as to the best allocation of resources. Will the costs for security be higher if individuals can distribute leaflets and engage in confrontational debates all over campus rather than in one defined and more easily secured location? What about large gatherings and demonstrations? Would it be easier and less costly to provide for security if these events are confined to one area of campus? What about the likelihood of large numbers of dropped leaflets everywhere if leafleting is permitted all over campus? Will clean-up costs be higher? Will slip-and-fall accidents occur if students or others slip on glossy leaflets dropped on staircases or elsewhere?** It will be costly for the university to quickly dispatch workers to clean up large quantities of dropped leaflets to prevent such occurrences. **Of course, if someone is injured because the dropped leaflets were not picked up quickly enough, the university could face liability for the victim's injuries, thus creating another potential financial drain on an already decimated university budget**.

#### Speech zones prevent disruption of campus life.

**Zeiner:** Zeiner, Carol L. [Assistant Professor of Law, St. Thomas University School of Law, Miami Gardens, Florida; former College Attorney for Miami-Dade Community College (now Miami-Dade College).] “Zoned Out! Examining Campus Speech Zones.” *Louisiana Law Review.* Volume 66. Fall 2005. RP

What about noise and disruption? **The concept of campus speech zones developed during the turbulent years of the 1960s and early 1970s so that campus unrest would not interfere with classes, study areas, student dormitory life, and the general business operations of universities**. These concerns still exist today.

#### Blanket eliminations of speech zones are bad [link to pragmatism]

**Zeiner:** Zeiner, Carol L. [Assistant Professor of Law, St. Thomas University School of Law, Miami Gardens, Florida; former College Attorney for Miami-Dade Community College (now Miami-Dade College).] “Zoned Out! Examining Campus Speech Zones.” *Louisiana Law Review.* Volume 66. Fall 2005. RP

**Every university is unique; therefore, no universally applicable answer to the step one question is possible. Each university presently employing or considering using campus speech zones should undertake a thorough step one analysis specific to its own unique institution**.4° **This article does not attempt to provide a "one-size-fits-all" answer to a question for which no single answer exists**. Rather, it creates a framework, then carries out a comprehensive analysis of that framework to serve as a guide to universities as they undertake step one and examine the fundamental question of whether their university should utilize campus speech zones, and if so, how.

#### Colleges are a risk for a terror attack now.

**Zeiner:** Zeiner, Carol L. [Assistant Professor of Law, St. Thomas University School of Law, Miami Gardens, Florida; former College Attorney for Miami-Dade Community College (now Miami-Dade College).] “Zoned Out! Examining Campus Speech Zones.” *Louisiana Law Review.* Volume 66. Fall 2005. RP

**Aside from controversy surrounding either the Patriot Act or the increased presence of law enforcement on campus, universities in the United States need to be concerned with respect to the war on terrorism. It adds a new dimension to campus security. No longer are universities concerned only with premises safety or general crime issues.' 39 A university would make an appealing soft target for a terrorist attack. Such an attack would strike directly at persons and values Americans dearly cherish-their children and education**.' A knapsack left behind 14' can pose a security risk that "isn't just theoretical: Terrorists used such an approach in a deadly attach in 2002 at Hebrew University of Jerusalem. And knapsacks were used in the [2004] bombings in Madrid.' 42 **In addition to international terrorists, university administrators must also keep in mind threats from domestic sources such as those opposing the university's research agenda**. Currently, university administrators need to evaluate their specific campus' vulnerabilities. As Jaschik poses the question, "How literally is someone going to want to target the University of 'Fill in the Blank?"",143 In reaching its decision with respect to campus speech zones, **a university must consider whether use of campus speech zones for group demonstrations and speech activities increases the risks or facilitates safety and security measures.**

#### Colleges are at risk for huge lawsuits.

**Zeiner:** Zeiner, Carol L. [Assistant Professor of Law, St. Thomas University School of Law, Miami Gardens, Florida; former College Attorney for Miami-Dade Community College (now Miami-Dade College).] “Zoned Out! Examining Campus Speech Zones.” *Louisiana Law Review.* Volume 66. Fall 2005. RP

**In the not too distant past, universities seemed almost immune from litigation**. Whether due to the then-prevailing doctrine of in loco parentis or to a widely-held perception that universities were the institutional equivalent of motherhood and apple pie, little litigation was instituted against universities. **Today, the situation is very different. Universities are considered deep pockets and lawsuits against universities are commonplace.' Higher education law has become a growth industry.' Students sue over grades, academic or disciplinary dismissal, curricular changes such as the elimination of programs, personal injuries, campus safety and security issues, the institution's admissions practices, intercollegiate athletics, the awarding of scholarships, issues relating to discrimination, sexual harassment and extra-curricular activities, to name just a few. Employees sue with respect to a myriad of academic or employment issues** ranging from hiring practices, promotion practices, discrimination issues, unfair labor practices reductions in force and academic freedom, to safety and security. **Vendors sue with respect to the institution's purchasing practices and contracts**. Visitors sue over slips and falls, premises safety, and accessibility issues. Towns dispute with universities about infrastructure, the payment of ad valorem taxes, and concurrency and safety issues. In short, today it seems the public university is confronted with as many disputes and as much litigation as businesses and governmental entities in general. As a result, risk management has become an important aspect of higher education administration. On the positive side, litigation has made universities more cognizant of and willing to address important issues. Examples include campus safety, halting discriminatory practices in the workplace, and complying with the access requirements of the Americans with Disabilities Act. On the negative side, college administrators, who are not typically attorneys, may hesitate to take action out of confusion as to their legal obligations or out of fear that they may expose their institution to liability. **With respect to campus speech issues, an article in Trusteeship magazine reflected the quandary of many university administrators:** September 2003 was an especially turbulent month for speech on the American college campus ....For example, the University of Hawaii was successfully sued in state court by a basketball fan who, at a game several years ago, had been offended when the team's student manager uttered audible racial slurs ....In Pennsylvania, a federal judge ruled that Shippensburg State University could not invoke certain student-conduct policies directed against acts of intolerance. The court treated such provisions in the student handbook as a restrictive "speech code," .... [T]he judge found that these policies (which he conceded to be "well intentioned") violated the free-speech rights of several Shippensburg students. That same month, California Polytechnic University-San Luis Obispo was taken to court under the First Amendment for targeting a white student because he had posted a flier outside the campus multicultural center that many minority students found deeply offensive.

#### Speech zones are key to open debates on campus.

**Zeiner:** Zeiner, Carol L. [Assistant Professor of Law, St. Thomas University School of Law, Miami Gardens, Florida; former College Attorney for Miami-Dade Community College (now Miami-Dade College).] “Zoned Out! Examining Campus Speech Zones.” *Louisiana Law Review.* Volume 66. Fall 2005. RP

**A number of conclusions about campus speech zones can be drawn from this analysis of Pelikan's work. Dialogue leading to intellectual cultivation is the lifeblood of the university**. Meaningful dialectic is essential to the many roles of the university. It is axiomatic that freedom of thought, inquiry, and expression are indispensable. Without these freedoms, the university would no longer be the university. Freedom of expression does not, however, dictate a cacophony of voices, each trying to out-shout the others. Intellectual cultivation is not typically derived from high volume or hyperbole, but in some instances it might result. Pelikan stresses the need for dialectic and rational methods of analysis. 230 **A meaningful, thoughtful exchange of ideas, careful scrutiny, and probing questions are necessary**. Moreover, the character and nature of the university are undermined if the university itself becomes an advocate of any of the polarities of ideology. According to Bickel and Lake, a university ought to facilitate an enriching higher education learning experience in a reasonably safe, if not always calm or pleasant, environment for all students. How do the essential characteristics and many roles inherent in the "idea of the university" impact a specific university's decision with respect to speech zones? **It seems to me that the university needs to accommodate formal scholarly debate, situations in which the exchange or ideas could be quiet, reasoned and dialectical, or perhaps louder and more impassioned, without disturbing the classroom activities, dormitory life, or business offices of the university**, and without rendering impossible more moderated,232 informal discussion of ideas throughout the campus. **While the phrase "freedom of thought, inquiry and expression," standing alone, seems to argue against campus speech zones, an analysis of characteristics essential for meaningful dialectic seems to open the door for campus speech zones. In fact, the purpose of the university as elucidated by Pelikan would seem to argue in favor of carefully crafted campus speech zones that would facilitate impassioned expression, vigorous debate, informal discussion of ideas, and quiet contemplation on campus.**

#### Speech zones key to stop hate speech.

**Zeiner:** Zeiner, Carol L. [Assistant Professor of Law, St. Thomas University School of Law, Miami Gardens, Florida; former College Attorney for Miami-Dade Community College (now Miami-Dade College).] “Zoned Out! Examining Campus Speech Zones.” *Louisiana Law Review.* Volume 66. Fall 2005. RP

Just as freedom of thought, inquiry, and expression, and the importance of open dialogue and dialectic, lie at the heart of the idea of the university, equality of opportunity lies there as well. "The concept of opportunity is therefore essential to the definition of the idea of the university. 233 It is clear both in the university's "duties to society" 234 and its position as a "ground of promise [for] the future"235 that higher education for all students of academic ability is a means for those persons and groups within society who are victims of discrimination and exclusion to achieve access to the social and economic benefits enjoyed by the majority. Universities are to assume a position of leadership in this area. This being the case, it is easy to understand why the issues of hate speech and university speech codes are controversial in higher education.236 Simply put, the conflict exists because the role of the university is in conflict on this point,237 just as, according to some commentators, the First and Fourteenth Amendments to the United States Constitution 238 are in conflict on this point. **If vile expressions of hatred impair equal access to educational opportunity by members of the targeted group, does this not undermine both the constitutional ideal and the equality of opportunity inherent in the idea of the university?** But, if abhorrent ideas cannot be expressed, how can they be subjected to dialectic rigor so that they can be debated and their falsity illuminated? Do campus speech zones have any relevance at all to this vexing problem? If so, would they exacerbate or ameliorate the problem? **Campus speech codes have not proved to be a viable means of coping with hate speech** 240 in the United States. 24 1 A number of commentators have suggested a variety of regulatory and non- regulatory means to attempt to address the problem of hate speech. **There may be one miniscule way in which campus speech zones can augment other constitutionally allowable measures to address hate speech. It would seem that large gatherings of persons expressing racist, sexist, or otherwise discriminatory ideas might be especially intimidating and hurtful to the targeted students who would, of necessity, have to Vass by the gathering in order to get to their dormitories or classes,**2 46 just as it would seem that large gatherings of individuals expressing supportive ideas might be encouraging. **Perhaps it would be helpful if those students and others who did not want to be exposed to particular speech activities were not forced into extremely close proximity with large events by virtue of the physical means of access to key areas of campus. If large gatherings must congregate in campus speech zones to carry on their free expression activities, regardless of content, and if the university provides other avenues to gain access to key areas of the campus, then targeted students could select which gatherings that they wish to encounter and avoid those that are repugnant or intimidating**.248 This suggestion is meant only as a possible miniscule measure to address the issue of especially loud, overpowering expression by large groups, and I recognize that it does nothing to deal with the underlying problem of hatred. 24 9 The "other avenues" must be attractive and reasonably convenient. If they are unattractive or inconvenient, 250 any benefit to be gained by this suggestion would be eradicated, and the impact might, although unintentionally, reinforce the messages of subordination being expressed by the speakers. 2 51 It is important however, that campus speech zones not be relegated to remote areas of the campus where their communicative purpose would be unduly hampered.252

#### Consult the students counterplan lmfao

**Zeiner:** Zeiner, Carol L. [Assistant Professor of Law, St. Thomas University School of Law, Miami Gardens, Florida; former College Attorney for Miami-Dade Community College (now Miami-Dade College).] “Zoned Out! Examining Campus Speech Zones.” *Louisiana Law Review.* Volume 66. Fall 2005. RP

**In assembling their portrait of undergraduates in the United States, Levine and Cureton noted that students in the late 1990s seemed to be especially sensitive, with emotions easily aroused on topics of race, gender, ethnicity, inequality, and victimization. In reaching a decision about campus speech zones, a university must gauge the needs and attitudes of its particular student body and whether campus speech zones would be helpful with respect to this delicate student issue. Would carefully designed campus speech zones such as those described in the preceding paragraph allow students to voice their strong feelings while simultaneously enabling others to examine, address, and possibly resolve their concerns in informal, non-confrontational settings?** Levine and Cureton applaud the bravery and willingness of today's college students to tackle the problems confronting society in order to find answers. 254 **In performing its contextual analysis of student speech zones, a university might perform a great service to its students and society, in keeping with the underlying role of the university, if it considers whether any variety of campus speech zones would assist students in finding solutions to this problem.**

#### Some kind of PIC idk what yet

**Zeiner:** Zeiner, Carol L. [Assistant Professor of Law, St. Thomas University School of Law, Miami Gardens, Florida; former College Attorney for Miami-Dade Community College (now Miami-Dade College).] “Zoned Out! Examining Campus Speech Zones.” *Louisiana Law Review.* Volume 66. Fall 2005. RP

Opponents of campus speech zones have argued that the very existence of such zones implies that the rest of the campus is a "no speech"2 58 or "censorship" 259 zone. **While it is not my experience that universities create campus speech zones to prevent speech or purposefully try to eliminate the exchange of ideas on campus, 260 it is possible for a university mistakenly to enact campus speech zones merely for convenience of management and to save on costs for clean-up**. This is why undertaking the step one analysis is essential. Step one helps a university in two especially important regards. Step one helps a university discover its true purpose for considering campus speech zones. **Once its purposes are revealed, the university can analyze the adequacy of those purposes against constitutional standards and avoid enacting campus speech zones if the zones would be based on constitutionally inadequate grounds. In addition, step one requires that a university examine its intentions with respect to campus speech zones vis-A-vis the essential character of universities, its own educational objectives, and its own specific hot topics. With this information available, a university can avoid those varieties of campus speech zones that would be counterproductive. Moreover, with all the information generated by the step one analysis in view, a university can consider whether certain varieties of campus speech zones, those without counterproductive elements, could actually enhance the educational experience by providing opportunities for both thought-provoking and thoughtful dialectic. When examined, speech zone regulations are characterized as content-neutral regulations that restrict speech**. While they do regulate and therefore restrict speech in the technical sense, it is questionable whether properly designed zones necessarilyreduce speech. **For example, it seems that properly designed campus speech zones could be popular destinations on campus to draw students into thought-provoking dialogue, thus enabling a key purpose of universities**. There could be areas designed to facilitate exciting, impassioned expression. **Areas could also be designed for more moderated dialectical exchanges. An area of tables and benches, with a speakers stand, could be designed on an outdoor plaza to approximate coffeehouses of past generations. Members of the university community could be encouraged to use it for comparatively quiet dialogue**.

#### Speech zones are an important measure to stop terror.

**Zeiner:** Zeiner, Carol L. [Assistant Professor of Law, St. Thomas University School of Law, Miami Gardens, Florida; former College Attorney for Miami-Dade Community College (now Miami-Dade College).] “Zoned Out! Examining Campus Speech Zones.” *Louisiana Law Review.* Volume 66. Fall 2005. RP

**Unfortunately, the possibility of terrorist acts must be considered as well as more general concerns under the heading of campus safety and securit**y. As pointed out in Part II.D,27 there are risks posed by international and domestic terrorist groups.278 Obviously, large gatherings constitute a particularly attractive target for terrorists, although any site on a university campus might be considered attractive by those bent on attacking the American way of life. On the one hand, this would seem to suggest that campus speech zones enable terrorists to know which areas of campus might be likely targets and suggests that campus speech zones should be eliminated so that free speech events could occur spontaneously anywhere on campus, and terrorists would not have time to plan an attack. **However, it does not take much advance planning to carry a weapons-laden knapsack into a crowd. Thus, perhaps it is more important for security personnel to have the benefit of advance planning. Moreover, security features could be designed into the physical characteristics of designated speech zones more practically than could be accomplished if large gatherings for speech activities could occur anywhere on campus.**

#### Their impacts are non-unique – elimination of speech codes doesn’t stop state surveillance of campuses – this quashes speech.

**Zeiner:** Zeiner, Carol L. [Assistant Professor of Law, St. Thomas University School of Law, Miami Gardens, Florida; former College Attorney for Miami-Dade Community College (now Miami-Dade College).] “Zoned Out! Examining Campus Speech Zones.” *Louisiana Law Review.* Volume 66. Fall 2005. RP

This then brings up the issue of campus security cameras, in general, and in the context of the Patriot Act279 and other anti- terrorism laws**. While most provisions of the Patriot Act that apply to universities have only indirect, if any, bearing280 on campus speech zones, 2 8 1 tapes from campus security cameras might well constitute business records that could be obtained under the Patriot Act.** **The spectre of the government surreptitiously spying on lawful free speech activities recalls the McCarthy era and Vietnam War era activities of government**. 8 2 The use of security cameras is an issue that must be confronted as a university considers the question of campus speech zones and free speech on campus more generally. **If a university were to do away with campus speech zones entirely, the issues of cameras on campus and the reach of the Patriot Act to obtain tapes still remain. The issue is more serious, however, when a government actor, namely a public university, requires that certain speech activities take place in zones equipped with cameras that could be used as surveillance cameras. While the issue could be most acute if a university were to require that all expressive activities take place within camera- equipped designated campus speech zones, the issue is still present if such speech zones are required only for large gatherings. This issue must be addressed. Should security cameras be entirely eliminated from campus? Should they be eliminated from designated speech zones? What is the impact of their elimination on general campus safety and security and the additional risks now posed by terrorism**? While one cannot presume to answer these questions for any particular university, it would seem that a university would approach the issue from the combined perspectives of the educational experience it intends to facilitate, the general obligations to provide a reasonably safe campus,283 and any additional precautions that might be considered against heightened risks of terrorism. Thus, it would seem that if cameras were considered necessary for general safety and have been used effectively on campus for that purpose, they should remain. However, the additional factor of possible government access to tapes of security cameras might add weight to the conclusion that campus speech zones are not necessary for small group expressive activities. The question is then narrowed: If larger group activities are to take place in designated campus speech zones, should those zones be camera-equipped or camera-free? Or, should cameras be turned off during gatherings of security personnel providing crowed control and general security are present in person? If a university establishes multiple speech zones on campus,284 should some have cameras and others be camera-free so that speakers have a choice? If so what about general safety concerns and the threat of terrorism?2 Would prominently placed notices that-a speech zone does not have security cameras provide sufficient information for students to make responsible individual decisions for their safety?286 Or, are camera-free campus speech zones inappropriate due to the heightened risk of terrorist attacks on larger gatherings? Would prominently placed notices advise non- terrorist criminals of the best locations for purse-snatchings, muggings, and rapes? Each of these questions is best decided by the individual university in the unique context of its own circumstances.

### Kingkade

#### Title IX investigations are growing now.

**Kingkade:** Kingkade, Tyler [Contributor, Huffington Post] “There Are Far More Title IX Investigations Of Colleges Than Most People Know.” *Huffington Post.* June 2016. RP

The growing backlog of federal Title IX investigations into colleges and universities has now topped 300, but many people, including students at the schools under scrutiny, aren’t aware of those reviews. As of Wednesday, there were 246 ongoing investigations by the U.S. Department of Education into how 195 colleges and universities handle sexual assault reports under the gender equity law. A Freedom of Information Act request by The Huffington Post revealed another 68 Title IX investigations into how 61 colleges handle sexual harassment cases. This puts the total number of Title IX investigations officially dealing with sexual harassment at 315. (Under civil rights statutes, sexual assault is defined as an extreme form of sexual harassment.) But dozens of those Title IX reviews receive no publicity because they don’t specifically deal with sexual assault. If a school is being investigated for allegedly mishandling harassment cases, but not reports of assault, it doesn’t appear on the list regularly given to reporters by the Education Department. Major educational institutions — including New York University, the University of Minnesota-Twin Cities, Georgia State University, Florida A&M University, Rutgers University, Howard University, the University of Oklahoma, Kent State University and the University of Wisconsin-La Crosse — have escaped public scrutiny because Title IX investigations into their actions haven’t been highlighted by the government or the schools themselves. SUNY Broome Community College is under three investigations that haven’t been previously disclosed. The Education Department has no plans to regularly issue a list of cases involving sexual harassment only, an official told HuffPost.

### Caplan-Bricker

#### Title IX signals a commitment to diversity.

**Caplan-Bricker:** Caplan-Bricker, Nora [Writer and Contributor, Slate] “How Title IX Became Our Best Tool Against Sexual Harassment.” *New Republic.* June 2012. RP

**When former Indiana Senator Birch Bayh wrote Title IX forty years ago, his goal was very simple: to make sure women could get a good education**. He wanted to force schools to accept women as students, let them into classes, and hire them as professors. And he wanted to make professions that require higher education accessible to women. **As the law, which prohibits educational programs that take federal money from discriminating on the basis of sex, celebrates its fortieth birthday on Saturday, the changes Bayh was after have, to a stunning degree, happened—women have been earning more undergraduate degrees than men since 1996 and in 2009 overtook them in the attainment of doctoral degrees; 47 percent of legal degrees and 48 percent of medical degrees were conferred on women in 2010, compared to 7 percent and 9 percent, respectively, in 1972**. Title IX has become most famous for ushering female athletes onto the playing field—an application of Bayh’s law that he told me didn’t cross his mind when he was defending it in the Senate. **Another of the most lasting—and most controversial—legacies of Title IX is, likewise, in an area referenced nowhere in its 37 words: sexual harassment. The law made national headlines once again last spring when the Department of Education’s Office of Civil Rights announced that it would investigate whether Yale was violating Title IX by allowing a hostile sexual environment.** How did a law written to open the doors of classrooms become the staging ground for lawsuits over sexual misconduct? The answer, strangely enough, is also at Yale. In 1977, in the case of Alexander v. Yale,a group of young women at Yale University used the law to make a revolutionary argument: that sexual harassment and violence constitute discrimination against women. At the time, sexual harassment was considered par for the course on university campuses and in offices across the country. That its tacit acceptance created an environment in which men and women weren’t treated as equals, and that it should be a punishable offense, had not yet entered the American legal imagination. The Alexander v. Yale argument was the brainchild of a thirty-year-old Minnesotan who graduated from Yale Law School in the spring of 1977. She had developed the idea in a paper for a class (using Title XII of the Civil Rights Act of 1964, which concerns discrimination in the workplace), and she was in the middle of expanding it into her first book, Sexual Harassment of Working Women. Some of the plaintiffs in the case, all of whom were current or recent Yale undergraduates, had asked the university to institute reporting and grievance procedures for sexual harassment and been denied. MacKinnon worked with them to craft a complaint to show that Yale turned a blind eye when professors touched female students or pressured them to have sex in exchange for an “A”; that this perpetuated an atmosphere that interfered with female students’ success; and, therefore, that Yale was in violation of Title IX. In 1980, a judge threw out the five students’ suits on technical grounds but upheld the legal argument that harassment was discrimination. MacKinnon—who is now one of the most widely-read (and controversial) figures in feminist law—had seen revolutionary potential in Bayh’s concise law, and had used it to invent the idea of sexual harassment as we know it today. Alexander v. Yale also precipitated the creation of policies to address sexual misconduct at hundreds of universities across the U.S.— including Yale, which convened a grievance board in 1978, once the hubbub of the case began.

#### Title IX is effective in combatting sexual harassment.

**Caplan-Bricker:** Caplan-Bricker, Nora [Writer and Contributor, Slate] “How Title IX Became Our Best Tool Against Sexual Harassment.” *New Republic.* June 2012. RP

**Title IX remains a call to action and a crucial tool for those who believe schools need to take a harsher line on rape and sexual violence. When Vice President Joe Biden and Secretary of Education Arne Duncan issued updated guidelines for Title IX in 2010, they focused on grievance procedures for sexual assault, urging schools to crack down. The past few years have seen a slew of Title IX complaints seeking the reform of sexual grievance procedures—at, among others, Princeton, Duke, the University of Virginia, Harvard Law School, and, once again, Yale**. The most recent investigation of Yale closed this month with “no findings of noncompliance,” according to Yale President Richard Levin—though, as one of the complainants, the university had to sign an agreement to maintain the new policies it implemented this year, and to keep a close eye on the campus climate and report regularly to OCR. This complaint at Yale was, in many ways, depressingly similar to the case that preceded it by over thirty years: It asked the university to take public displays of misogyny seriously, and to create better recourse for victims of sexual violence and harsher punishments for perpetrators. The echoes of Alexander v. Yale are a reminder of sexism’s issued updated guidelines for Title IX insidious hold, and of the progress our society has yet to make. When I told Bayh about Title IX’s foundational role in sexual harassment law, he told me he doesn’t think “discrimination” is a strong enough term for sexual misconduct and violence. “That’s flat-out criminal activity,” he said. But because universities handle so many harassment and assault cases that occur between students in-house, classifying these crimes as pointed out in Slate discrimination has turned out to be an effective way to hold institutions accountable. Bayh said when he talks to young people today, they’ve almost never heard of Title IX, or they have some vague sense that it’s related to women’s sports. But he doesn’t mind. “**Equality between men and women is taken for granted, and that’s the best sign of progress**,” he said. Sometimes, though, it’s important to stop and remember, and anniversaries provide a natural opportunity. Schools shape each successive generation of American women and men today, just as they did forty years ago, and that means we shouldn’t take Title IX for granted just yet.

### Bauer

#### A supposedly “equal” playing field benefits the rich and powerful.

**Bauer:** Bauer, Fred [Fred Bauer is a writer from New England. His work has been featured in numerous publications, including The Weekly Standard and The Daily Caller. He also blogs at A Certain Enthusiasm. His Twitter handle is @fredbauerblog.] “The Le and ‘Discriminating Tolerance’.” *The National Review.* June 2015. RP

**A founding document of the new intolerance, Marcuse’s 50- year-old essay “Repressive Tolerance” levies a radical attack on the conventions of liberal democratic civilization**. The main thrust of “Repressive Tolerance” is as follows: The whole of society shapes what is politically possible for each of us, so any discussion of politics must attend to society as a whole. **However, from Marcuse’s perspective, Western society as a whole is thoroughly corrupted. His catalogue of horribles includes the “systematic moronization of children and adults alike by publicity and propaganda**, the release of destructiveness in aggressive driving, the recruitment for and training of special forces, the impotent and benevolent tolerance toward outright deception in merchandizing, waste, and planned obsolescence,” and many other things. Marcuse saw Western society as racially polarized, socially segregated, and economically divided. From his perspective, America in 1965 was addicted to war, exploitation, and cultural/sexual oppression. (In his 1955 Eros and Civilization, he considered the breaking of all sexual norms to be a key component of toppling the Western status quo.) Unlike many of his disciples, Marcuse was frank about what this intolerance would mean: ‘Liberating tolerance, then, would mean intolerance against movements from the Right and toleration of movements from the Left.’ **Marcuse argued that, because of the radical repressiveness of Western society, a tolerance for all viewpoints actually contributed to social oppression. A pervasive network of assumptions and biases implicitly privileges the viewpoint of the powerful, so that seemingly “equal” presentations of opposite opinions actually end up benefiting the viewpoint of the powerful. He offered the example of a magazine running a piece criticizing the FBI along with one praising the FBI. Fair and balanced? Not so fast, Marcuse said: “the chances are that the positive [story] wins because the image of [the FBI] is deeply engraved in the mind of the people.” Because of social programming, the inhabitants of a given society automatically favor certain values. The ideological playing field’s lack of levelness means that seemingly equal presentations of ideas are not really equal.**

#### The alternative is \_\_\_\_\_

**Bauer:** Bauer, Fred [Fred Bauer is a writer from New England. His work has been featured in numerous publications, including The Weekly Standard and The Daily Caller. He also blogs at A Certain Enthusiasm. His Twitter handle is @fredbauerblog.] “The Le and ‘Discriminating Tolerance’.” *The National Review.* June 2015. RP

In the light of this situation, Marcuse made a rather cunning inversion (one that has been aped countless times since by cultural organs across the United States): **The fact that society is so radically unequal means that we should be intolerant and repressive in the name of tolerance and liberty. He rejected what he termed “indiscriminate tolerance” — a tolerance that accepts all viewpoints — in favor of “liberating tolerance” or “discriminating tolerance.”** Unlike many of his disciples, Marcuse was frank about what this intolerance would mean: “**Liberating tolerance, then, would mean intolerance against movements from the Right and toleration of movements from the Left.**” When many in the media junked the Bush-era refrain, “Dissent is patriotic,” and began to suggest that dissent during the Obama administration was a product of some unhealthy motivation (especially racism), they were putting into practice Marcuse’s theory of “discriminating tolerance.” Elsewhere in “Repressive Tolerance,” **Marcuse outlined some of the other “apparently undemocratic” tactics that partisans of a true democracy should use**. This passage is worth quoting at length, not only because of its explicitness but also because of its prescience: **They would include the withdrawal of toleration of speech and assembly from groups and movements which promote aggressive policies, armament, chauvinism, discrimination on the grounds of race and religion**, or which oppose the extension of public services, social security, medical care, etc. Moreover, the restoration of freedom of thought may necessitate new and rigid restrictions on teachings and practices in the educational institutions which, by their very methods and concepts, serve to enclose the mind within the established universe of discourse and behavior — thereby precluding a priori a rational evaluation of the alternatives. And to the degree to which freedom of thought involves the struggle against inhumanity, restoration of such freedom would also imply intolerance toward scientific research in the interest of deadly “deterrents,” of abnormal human endurance under inhuman conditions, etc. **Marcuse’s case for repression — of thought, conscience, speech, and science — in the name of the “right” ideas has apparently persuaded many powerful American cultural organs today. Prominent public figures call for the criminal prosecution (even, potentially, imprisonment) of those who dare to question anthropogenic “climate change”; a person who publicly dissents from some prevailing orthodoxy is to be assailed by online mobs and demonized by major media voices; and government agencies target dissenters with impunity (whether by leaking damaging information about them, unleashing the IRS, or using other means).**

### Crimethinc

#### Free speech is a carrot dangled by the state – as soon as it gets anywhere valuable, the law readjusts and pulls it back.

**Crimethinc:** Crimethinc [News source and compiler] “This is Not a Dialogue.” *Crimethinc.* No date. RP

**Maybe you missed this, but youʼre not in a dialogue. Your views are beside the point. Argue all you want—your adversaries are glad to see you waste your breath. Better yet if you protest: theyʼd rather you carry a sign than do anything. Theyʼll keep you talking as long as they can, just to tire you out —to buy time. They intend to force their agenda on you. Thatʼs what all the guns are for, what the police and drones and surveillance cameras are for, what the FBI and CIA and NSA are for, what all those laws and courts and executive orders are for.** Itʼs what their church is for, what those racist memes are for, what online harassment and bullying are for. Itʼs what gay bashings and church burnings are for. **This is not a dialogue. How could you be so naïve? A dialogue—from which some of the participants can be deported at any time? A dialogue—in which one side keeps shooting and incarcerating the other side? A dialogue—in which a few people own all the networks and radio stations and printing presses, while the rest have to make do with markers and cardboard signs? A dialogue, really? Youʼre not in a dialogue. Youʼre in a power struggle**. All that matters is how much force you can bring to bear on your adversaries to defend yourself from them. **You can bet that if you succeed, they will accuse you of breaking off the dialogue, of violating their free speech**. They will try to lure you back into conversation, playing for time until they need no more stratagems to keep you passive while they put the pieces in place for tyranny. **This isnʼt a dialogue—itʼs a war.** Theyʼre gambling that you wonʼt realize this until itʼs too late. If freedom is important to you, if you care about all the people marked for death and deportation, start taking action.

#### Free speech is no longer radical – the Aff enables the state to defend fascists, which makes them grow stronger.

**Crimethinc:** Crimethinc [News source and compiler] “This is Not a Dialogue.” *Crimethinc.* No date. RP

Anarchists have defended freedom of speech for centuries now. This is important in principle: in an anarchist vision of society, neither the state nor any other entity should be able to determine what we can and cannot say. Itʼs also important in practice: as a revolutionary minority frequently targeted for repression, weʼve consistently had our speeches, newspapers, websites, and marches attacked. But we arenʼt the only ones who have taken up the banner of free speech**. More recently, the right wing in the US has begun to allege that a supposed failure to give conservative views an equal hearing alongside liberal views constitutes a suppression of their free speech. By accusing “liberal” universities and media of suppressing conservative views—a laughable assertion, given the massive structures of power and funding advancing those views—they use First Amendment discourse to promote reactionary agendas. Supposedly progressive campuses reveal their true colors as they mobilize institutional power to defend right-wing territory in the marketplace of ideas, going so far as to censor and intimidate opposition. Extreme right and fascist organizations have jumped onto the free speech bandwagon as well. Fascists rely on the state to protect them, claiming that racist, anti-immigrant, and anti-gay organizing constitutes a form of legally protected speech. Fascist groups that are prevented from publishing their material in most other industrialized democracies by laws restricting hate speech frequently publish it in the United States, where no such laws exist**, and distribute it worldwide from here. In practice, state protection of the right to free expression aids fascist organizing. **If defending free speech has come to mean sponsoring wealthy right-wing politicians and enabling fascist recruiting, itʼs time to scrutinize what is hidden behind this principle.** Despite the radical roots of organizations such as the American Civil Liberties Union that advocate for state protection of free expression, **this form of civil liberties empties the defense of free speech of any radical content, implying that only the state can properly guarantee our ability to express ourselves freely** and thus reinforcing the power of the state above the right to free speech itself.

#### Free speech rights give the state more power to expand – rights are the means by which the state can grow.

**Crimethinc:** Crimethinc [News source and compiler] “This is Not a Dialogue.” *Crimethinc.* No date. RP

There appears to be a broad consensus in the US political spectrum in favor of the right to free speech. While opponents may quibble over the limits, such as what constitutes obscenity, pundits from left to right agree that free speech is essential to American democracy. Appeals to this tradition of unrestricted expression confer legitimacy on groups with views outside the mainstream, and both fascists and radicals capitalize on this. Lawyers often defend anarchist activity by referencing the First Amendmentʼs provision preventing legislation restricting the press or peaceable assembly. We can find allies who will support us in free speech cases who would never support us out of a shared vision of taking direct action to create a world free of hierarchy. **The rhetoric of free speech and First Amendment rights give us a common language with which to broaden our range of support and make our resistance more comprehensible to potential allies, with whom we may build deeper connections over time. But at what cost? This discourse of rights seems to imply that the state is necessary to protect us against itself, as if it is a sort of Jekyll and Hyde split personality that simultaneously attacks us with laws and police and prosecutors while defending us with laws and attorneys and judges. If we accept this metaphor, it should not be surprising to find that** the more we attempt to strengthen the arm that defends us, the stronger the arm that attacks us will become. **Once freedom is defined as an assortment of rights granted by the state, it is easy to lose sight of the actual freedom those rights are meant to protect and focus instead on the rights themselves—implicitly accepting the legitimacy of the state. Thus, when we build visibility and support by using the rhetoric of rights, we undercut the possibility that we will be able to stand up to the state itself. We also open the door for the state to impose othersʼ “rights” upon us.**

#### Free speech enables the state to appear as a benevolent savior, while cracking down on radicals.

**Crimethinc:** Crimethinc [News source and compiler] “This is Not a Dialogue.” *Crimethinc.* No date. RP

**In the US, many take it for granted that it is easier for the state to silence and isolate radicals in countries in which free speech is not legally protected. If this is true, who wouldnʼt want to strengthen legal protections on free speech? In fact, in nations in which free speech is not legally protected, radicals are not always more isolated—on the contrary, the average person is sometimes more sympathetic to those in conflict with the state, as it is more difficult for the state to legitimize itself as the defender of liberty**. Laws do not tie the hands of the state nearly so much as public opposition can; given the choice between legal rights and popular support, we are much better off with the latter. One dictionary defines civil liberty as “the state of being subject only to laws established for the good of the community.” This sounds ideal to those who believe that laws enforced by hierarchical power can serve the “good of the community”—but who defines “the community” and what is good for it, if not those in power? **In practice, the discourse of civil liberties enables the state to marginalize its foes: if there is a legitimate channel for every kind of expression, then those who refuse to play by the rules are clearly illegitimate.** Thus we may read this definition the other way around: under “civil liberty,” all laws are for the good of the community, and any who challenge them must be against it. **Focusing on the right to free speech, we see only two protagonists, the individual and the state.** Rather than letting ourselves be drawn into the debate about what the state should allow, anarchists should focus on a third protagonist—the general public. We win or lose our struggle according to how much sovereignty the populace at large is willing to take back from the state, how much intrusion it is willing to put up with. If we must speak of rights at all, rather than argue that we have the right to free speech let us simply assert that the state has no right to suppress us. Better yet, letʼs develop another language entirely.

#### Free speech isn’t possible in a state marked by disparities – only the rich can ever have a shot at true freedom.

**Crimethinc:** Crimethinc [News source and compiler] “This is Not a Dialogue.” *Crimethinc.* No date. RP

**The discourse of free speech in democracy presumes that no significant imbalances of power exist, and that the primary mechanism of change is rational discussion. In fact, a capitalist elite controls most resources, and power crystallizes upward along multiple axes of oppression**. **Against this configuration, it takes a lot more than speech alone to open the possibility of social change. There can be no truly free speech except among equals—among parties who are not just equal before the law, but who have comparable access to resources and equal say in the world they share. Can an employee really be said to be as free to express herself as her boss, if the latter can take away her livelihood? Are two people equally free to express their views when one owns a news network and the other cannot even afford to photocopy fliers? In the US, where donations to political candidates legally constitute speech, the more money you have, the more “free speech” you can exercise.** As the slogan goes, freedom isnʼt free—and nowhere is that clearer than with speech. Contrary to the propaganda of democracy, ideas alone have no intrinsic force. Our capacity to act on our beliefs, not just to express them, determines how much power we have. In this sense, the “marketplace of ideas” metaphor is strikingly apt: you need capital to participate, and the more you have, the greater your ability to enact the ideas you buy into. **Just as the success of a few entrepreneurs and superstars is held up as proof that the free market rewards hard work and ingenuity, the myth of the marketplace of ideas suggests that the capitalist system persists because everyone—billionaire and bellboy alike—agrees it is the best idea.**

#### Free speech isn’t guaranteed – the state can move to eliminate it when the speech becomes too radical.

**Crimethinc:** Crimethinc [News source and compiler] “This is Not a Dialogue.” *Crimethinc.* No date. RP

**But what if, despite the skewed playing field, someone manages to say something that threatens to destabilize the power structure?** If history is any indication, it swiftly turns out that freedom of expression is not such a sacrosanct right after all. **In practice, we are permitted free speech only insofar as expressing our views changes nothing. The premise that speech alone cannot be harmful implies that speech is precisely that which is ineffectual: therefore, anything effectual is not included among oneʼs rights. During World War I, the Espionage Act criminalized any attempt to “cause insubordination, disloyalty, mutiny, [or] refusal of duty**” or to obstruct recruiting for the armed forces. President Woodrow Wilson urged the billʼs passage because he believed antiwar activity could undermine the US war effort. Alexander Berkman and Emma Goldman were arrested under this law for printing anarchist literature that opposed the war. Likewise, the Anarchist Exclusion Act and the subsequent Immigration Act were used to deport or deny entry to any immigrant “who disbelieves in or who is opposed to all organized government.” Berkman, Goldman, and hundreds of other anarchists were deported under these acts. **There are countless other examples showing that when speech can threaten the foundation of state power, even the most democratic government doesnʼt hesitate to suppress it. Thus, when the state presents itself as the defender of free speech, we can be sure that this is because our rulers believe that allowing criticism will strengthen their position more than suppressing it could. Liberal philosopher and ACLU member Thomas Emerson saw that freedom of speech “can act as a kind of ‘safety valveʼ to let off steam when people might otherwise be bent on revolution.” Therein lies the true purpose of the right to free speech in the US.**

#### The alternative is to reject the Aff’s conception of speech as a rejection of speech that depends on state recognition – people themselves should fight the state through grassroots political organizing.

**Crimethinc:** Crimethinc [News source and compiler] “This is Not a Dialogue.” *Crimethinc.* No date. RP

**Obviously, anarchists should not organize against free speech. But the stranglehold of the state on the discourse of free speech seems to set the terms of the debate: either we condone censorship, or we condone state protection of our enemies and their right to organize against us and others.** This results in paradoxes, such as radicals being accused of opposing freedom for shutting down a fascist speaker. **In contrast to state protection of KKK rallies and the like, there are models of free expression that neither depend upon the enforcement of rights from above nor sanction oppressive behavior.** Anarchists might judge speech not as something fundamentally different from action, but as a form of action: when it harms others, when it reinforces hierarchies and injustices, we confront it the same way we would confront any other kind of abuse or oppression. This is simply self-defense. **When a xenophobic politician comes to speak at a public university, his honorarium is paid with tax money extorted from workers and given to universities so it will continue to circulate among the rich and powerful**. Regardless of right-wing whining about the marginalization of conservative opinions, the fact that he is powerful enough to secure lucrative speaking engagements indicates that his views are hardly suppressed. As a wealthy white citizen and public figure, his opportunity to express himself canʼt reasonably be compared to the opportunity of, say, the immigrants he scapegoats. If their voices and agency actually held equal weight, the politician could say whatever he wanted, but would be powerless to subject others to his schemes. **When we confront him directly rather than politely disagreeing, weʼre not attacking his right to express his opinions. Weʼre confronting the special advantages he is accorded: taxpayer money, police protection, an exclusive soapbox.** Weʼre confronting the power he wields over our lives through institutions built on violence, a power he means to extend by using speaking events to gain wealth, legitimacy, and recruits to his racist endeavors. **Confronting him is a political practice that does not reduce freedom to rights, but challenges the privileges of the state—that makes no false dichotomy between speech and action, but judges both by the same standards—that does not enable the state to frame itself as the defender of free speech, but asserts that we are the only ones who can defend and extend our own freedom.**

#### Action is needed to stop fascists – don’t give them free speech

**Crimethinc:** Crimethinc [News source and compiler] “This is Not a Dialogue.” *Crimethinc.* No date. RP

**You could just as easily say that not stopping fascists from speaking makes you as bad as them, because it gives them the opportunity to organize to impose their agenda on the rest of us. If you care about freedom, donʼt stand idly by while people mobilize to take it away.**

#### We should draw attention to injustices

**Crimethinc:** Crimethinc [News source and compiler] “This is Not a Dialogue.” *Crimethinc.* No date. RP

**Shouldnʼt we just ignore them? They want attention**, and if we give it to them weʼre letting them win. **Actually, fascists usually donʼt want to draw attention to their organizing; they do most of it in secret for fear that an outraged public will shut them down. They only organize public events to show potential recruits that they have power, and to try to legitimize their views as part of the political spectrum. By publicly opposing fascists, we make it clear to them—and more importantly, to anyone else interested in joining them—that they will not be able to consolidate power without a fight**. Ignoring fascists only allows them to organize unhindered, and history shows that this can be very dangerous. **Better we shut them down once and for all**.

#### Bad ideas will win out over good ones – the marketplace of ideas is invented to give more airtime to fascist, majoritarian views – we need to stop these views.

**Crimethinc:** Crimethinc [News source and compiler] “This is Not a Dialogue.” *Crimethinc.* No date. RP

**People donʼt become fascists because they find their ideas persuasive; they become fascists for the same reason others become police officers or politicians: to wield power over other people.** Itʼs up to us to show that fascist organizing will not enable them to obtain this power, but will only result in public humiliation. That is the only way to cut off their source of potential recruits. **History has shown over and over that fascism is not defeated by ideas alone, but by popular self-defense. Weʼre told that if all ideas are debated openly, the best one will win out, but this fails to account for the reality of unequal power. Fascists can be very useful to those with power and privilege, who often supply them with copious resources; if they can secure more airtime and visibility for their ideas than we can, we would be fools to limit ourselves to that playing field. We can debate their ideas all day long, but if we donʼt prevent them from building the capacity to make them reality, it wonʼt matter.**

#### Martyrdom is worsened when we condone oppressive views.

**Crimethinc:** Crimethinc [News source and compiler] “This is Not a Dialogue.” *Crimethinc.* No date. RP

Trying to suppress their voices will backfire by generating interest in them. **Resistance to fascism doesnʼt increase interest in fascist views. If anything, liberals mobilizing to defend fascists on free speech grounds increases interest in their views by conferring legitimacy on them. This plays directly into their organizing goals, allowing them to drive a wedge between their opponents using free speech as a smokescreen. By tolerating racism, homophobia, anti-Semitism, and xenophobia, so-called free speech advocates are complicit in the acts of terror fascist organizing makes possible.**

### Andrews

#### Police protection of hate speakers causes police crackdowns – David Duke proves.

**Andrews:** Andrews, Travis M. [Contributor, The Washington Post] “Violence erupts at protest against former KKK leader David Duke at La. historic black college.” *The Washington Post.* November 2016. RP

**A planned protest on the campus of Dillard University, a historic black college in New Orleans, led to police pepper-straying and arresting demonstrators. On Wednesday night, Dillard held a U.S. Senate debate, which included candidate David Duke. Duke is best known for his time as a Ku Klux Klan grand dragon and later, a KKK grand wizard, the head of the white supremacist organization.** Duke was included in the debate after he acquired the requisite 5 percent polling benchmark, set by Raycom Media, as the Associated Press [noted](http://www.knoe.com/content/news/David-Duke-included-in-Louisianas-latest-Senate-race-debate-399662841.html). The debate was broadcast through much of the state of Louisiana. Many were angered by Duke’s inclusion in the debate, particularly since it was held at a historic black college and Duke has a past as a white supremacist. In reaction to this, one group of students, calling itself the Socially Engaged Dillard University Students, planned a protest of the debate. “**His presence on our campus is not welcome, and overtly subjects the entire student body to safety risks and social ridicule**,” SEDUS representatives wrote in an open letter obtained by [WGNO](http://wgno.com/2016/11/02/dillard-student-group-plans-protest-of-david-duke-debate-appearance/). “This is simply outrageous.” “Everything David Duke promotes is an anathema to us, a Historically Black College & University,” the letter said. “**Instead of denying the presence of this terrorist onto our campus, our school’s president has assured his safety by Dillard University armed police, against us, the Dillard University student body.” The protest lasted hours on Wednesday, but eventually turned discordant as protesters attempted to force their way into the building housing the debate.“No Duke. No KKK. No fascist USA,” yelled one protester. Police confronted the protesters, pepper-spraying some. “We were holding the door open and they pepper-sprayed me. She was just standing.** There for no reason. It’s a damn shame,” protester Semhal Abbady [told](http://www.wdsu.com/article/protesters-pepper-sprayed-outside-us-senate-debate-at-dillard-university/8108205) WDSU. “They started releasing pepper spray,” said Annah Galloway. “They sprayed this girl directly in the face with it. I was covered on my shirt, my arms, my face — they are pepper-spraying. They are body-slamming people.” Two others, the Advocate [noted](http://www.theadvocate.com/new_orleans/news/education/article_19e666ec-a15a-11e6-889c-97f8ea4db8f7.html), were arrested but later released. No serious injuries were sustained during the protest. Meanwhile, during the debate, Duke fought with the moderator and called Jews “tribalist” after being asked about his earlier remarks about “CNN Jews.” “There is a problem in America with a very strong, powerful, tribal group that dominates our media and dominates our international banking,” Duke said. “I’m not opposed to all Jews.” Later in the debate, Democratic candidate Caroline Fayard called Duke a “bad man” and a “snake” who had “slithered out of the swamp.” At one point, Duke said, “I will be Donald Trump’s most loyal advocate.” Duke has always been a contentious figure in Louisiana politics. When he ran for Louisiana governor in 1991, his opponent Edwin Edwards, who had previously stood trial on charges of charges of mail fraud, obstruction of justice and bribery, defeated him.Edwards’s unofficial campaign sticker read, “Vote for the crook; it’s important.”

### Hudson

#### Protests against abortion shouldn’t be allowed

**Hudson:** Hudson, David L [First Amendment Scholar] “Abortion protests & buffer zones.” *First Amendment Center.* September 2002. RP

**Freedom of speech often confronts, challenges, provokes and revolts. Speech often serves as a catalyst for social change and sometimes as a weapon to attack one’s enemies. Sometimes government officials respond to speech by attempting to mitigate its effects on listeners and targets**. A common method is to pass buffer zones separating protesters from their targets or from designated areas. Buffer zones have been used repeatedly to attempt to control anti-abortion demonstrators outside abortion clinics. **The abortion issue has been one of the most publicly and politically volatile issues in American society, especially since the Supreme Court in 1973 found a constitutional right to an abortion in Roe v. Wade. Violence has occurred at abortion clinics and several physicians who perform abortions have been killed. To protect women and abortion-clinic doctors and staff, Congress in 1994 passed a law called F.A.C.E. — the Freedom of Access to Clinic Entrances Act (18 U.S.C., Sect. 248). The law prohibits injuring, intimidating or interfering with any person who obtains or provides reproductive health services. It provides for civil and criminal penalties against violators.** The law has survived several First Amendment challenges. **Sometimes courts will pass a special injunction providing for even greater control over anti-abortion demonstrators. Many times these injunctions take the form of buffer zones.**

### Chemaly

#### Trusting professors to use “common sense” harms minorities.

**Chemaly:** Chemaly, Soraya [Contributor, The Huffington Post] “What’s Really Important About ‘Trigger Warnings’.” *The Huffington Post.* May 2014. RP

**The first objection raised in the article is that professors should be able to use “common sense.” Common to whom?** Academic cultures are legacy cultures. **Until relatively recently, classrooms were largely comprised of young, elite, mostly white men** who were not frequently on the receiving end of sex, race, or sexuality based violence and threats. The core canon was built around the same constituency. These were not spaces, historically, where conversations about “women’s issues,” for example, either took place or were considered vitally important. As we all know, campuses today are much more diverse places and students have more direct experiences of racism, sexism, colonialism and more, including well-documented multi-generational trauma. **Many academics express the belief that their “common sense” judgment, when it comes to material that might cause genuine harm, should be respected. However, history, and the current composition of academia, which remains dominated by white men in most fields of study, suggests that trusting professors to know what will traumatize students is not a wise assumption.** Additionally, revelations regarding widespread institutional tolerance for sexual assault on campuses, brought to public attention primarily by students, rarely professors or administrators, do little to inspire confidence in the common sense of either. **Despite good intentions and individual professors’ interests, implicit biases are a legitimate and serious problem in academia. There is no reason to think these biases would not inform judgment and reduce empathy. Trigger warnings are fundamentally about empathy, which is informed by epistemology, status and stereotypes**. People with higher status, wealth, race and/or sex, for example, have the least amount. This is a consequence of living in a culture optimized to reflect their perspectives and address their needs. When it comes to trigger warnings, the prediction and acknowledgement of pain are salient. What this objection to warnings ignores is well-documented race and sex- based biases in the assessment and recognition of pain. People in the United States actually feel more empathy when they see a white person in pain than a black person. In their study, “The Girl Who Cried Pain: A Bias Against Women in the Treatment of Pain,” researchers Diane E. Hoffmann and Anita J. Tarzian documented the degree to which women’s pain is routinely dismissed in these ways as the “not real,” “emotional,” response of “fragile” females. Not only are women who experience pain less likely to be taken seriously when they describe it, but they are less likely to be treated by medical professionals.

#### Trigger warnings aren’t a suppression of free speech [T arg or link D]

**Chemaly:** Chemaly, Soraya [Contributor, The Huffington Post] “What’s Really Important About ‘Trigger Warnings’.” *The Huffington Post.* May 2014. RP

**Additionally, the idea that any trigger warnings constitute censorship is not only incorrect but also definitively misleading. In most cases, no one is saying professors cannot teach texts or show videos. Nor do warnings imply some sort of apology for lessons to follow**. Nor, in the interesting choice of words of one professor quoted in the Times piece, do trigger warnings mean that students “should not be forced to deal with something that makes them uncomfortable.” **Warnings seek mainly to give students information they need in order to decide whether or not to take or stay in a class.**

#### Trigger warnings are an instance of free speech [Another possible T arg or turn]

**Chemaly:** Chemaly, Soraya [Contributor, The Huffington Post] “What’s Really Important About ‘Trigger Warnings’.” *The Huffington Post.* May 2014. RP

**Ironically, given the chorus of “free speech!” complaints even against narrowly defined warnings, trigger warnings were, in their origins, a sign of the liberation of speech. They are a civil adaptation to the important acknowledgement and public discussion of stories long suppressed by a culture and a mainstream media either not interested in hearing them or that actively benefits from keeping them hidden. Trigger warnings exist because deadly serious and uncomfortable subjects previously not explored are now on the table** and not relegated to a distant past or being discussed primarily by people largely unaffected negatively by them. **Exaggerated objections to warnings based on free speech arguments attest to how profoundly integral our free speech norms are to maintaining and changing social structures.**

#### Trigger warnings break down power and privilege – they’re an acknowledgment that students matter.

**Chemaly:** Chemaly, Soraya [Contributor, The Huffington Post] “What’s Really Important About ‘Trigger Warnings’.” *The Huffington Post.* May 2014. RP

**Another way of way of thinking about trigger warnings, in the context of hierarchy and status on campus, is that the people to whom trigger warnings are important are legitimately saying, “I am here, acknowledge me and my experiences.”** That statement goes far beyond warnings. **It is essentially the crux of ongoing debates about what constitutes our core canon and what we do about “privilege.”** That is why there is particular objection to demands for trigger warnings on “materials that have an established place on syllabuses.” **To that end, what the New York Times article, and much of the conversation regarding the use of trigger warnings on campuses, did not talk about and should have was power, especially institutionalized power and the role it plays in deciding what and who are important on campus**. Tressie McMillan Cottom argues clearly that concerns for students’ feelings often act not to “silence power so much as stifle any discourse about how power acts on people.” The results can undermine attempts, among other things, to diversify the canon and its analysis. This was absolutely what happened in the case of Professor Shannon Gibney whose in-class discussion of structural racism “alienated” three white male students who then filed a discrimination suit, was sanctioned as the result of... structural racism and education as a capitalist enterprise. However, Gibney’s perspective is not the primary one being espoused by the loudest challengers to trigger warnings. **Those most inclined to resist on the basis of “censorship” appear to frequently be the same people who take their free speech and autonomy for granted and their truth as normative and universal.** The speech norms they seem to be espousing, mainly our mainstream ones, are stubbornly tied to discriminatory status quo hierarchies uninterested in “harm.” Having said all of this, I do not think that trigger warnings on campus should be mandated in any way, shape or form. As Professor Brittany Cooper says in describing why she does not employ them, “Encountering material that you have never encountered before, being challenged and learning strategies for both understanding and engaging the material is what it means to get an education.” Warnings, originally not about being “offended,” narrowly defined and a reflection of compassion, are not in-and-of themselves inimical to this idea or academic freedom. In the end, the most important fact about trigger warnings isn’t whether they are formalized or not, narrow or not, but that they are being discussed on campuses and in mainstream media, and no longer limited to the feminist blogs that understood why they were necessary in the first place. The words themselves, like others before them such as “domestic violence,” “sexual assault,” “rape culture,” signal a shift in the culture towards better understanding of broader perspectives. That empathy and diversity, which is what so much of trigger warnings comes down to, is a topic of debate on campuses, even by proxy, is a good thing.

### Finch

#### The term “trigger warning” invokes images of a gun – that causes psychological harm and is also a euphemism for violence.

**Finch:** Finch, Sam Dylan [Sam Dylan Finch a Contributing Writer for Everyday Feminism. He is queer writer, activist, and educator based in the San Francisco Bay Area.] “When You Oppose Trigger Warnings, You’re Really Saying These 8 Things.” *Everyday Feminism.* July 2015. RP

Editor’s Note: Like this phenomenal article, Everyday Feminism definitely believes in giving people a heads up about material that might provoke our reader’s trauma. **However, we use the phrase “content warning” instead of “trigger warning,” as the word “trigger” relies on and evokes violent weaponry imagery. This could be re-traumatizing for folks who have suffered military, police, and other forms of violence. So, while warnings are so necessary and the points in this article are right on, we strongly encourage the term “content warning” instead of “trigger warning.”**

#### They have no offense – a content warning literally takes 5 seconds to give or write.

**Finch:** Finch, Sam Dylan [Sam Dylan Finch a Contributing Writer for Everyday Feminism. He is queer writer, activist, and educator based in the San Francisco Bay Area.] “When You Oppose Trigger Warnings, You’re Really Saying These 8 Things.” *Everyday Feminism.* July 2015. RP

**Many people talk about the inconvenience of content warnings. As a writer, I’m calling bullshit on that. Even if writing an additional sentence at the beginning of my article were difficult (which it’s not), it will never compare to the inconvenience of a serious panic attack, a flashback, or a dissociative episode that a survivor might have if they encounter a trigger in my work**. As writers, filmmakers, content creators, or even educators, we regularly encounter demands on our work. Some people can ask for the most ridiculous things. **But a sentence at the beginning of our work or syllabus? A sentence to help survivors preserve their mental health? I’d say that’s the least bizarre or inconvenient request I’ve ever gotten.**

#### Content warnings are key to prevent PTSD.

**Finch:** Finch, Sam Dylan [Sam Dylan Finch a Contributing Writer for Everyday Feminism. He is queer writer, activist, and educator based in the San Francisco Bay Area.] “When You Oppose Trigger Warnings, You’re Really Saying These 8 Things.” *Everyday Feminism.* July 2015. RP

**Many of the folks who request content warnings are people dealing with PTSD. Symptoms of this disorder can be very debilitating, including** [**panic attacks, dissociation, flashbacks, hyperarousal, and difficulty sleeping.**](http://www.webmd.com/mental-health/understanding-posttraumatic-stress-disorder-symptoms) Content warnings can be important for people with PTSD who are trying to avoid content that may trigger one of their episodes. When people oppose content warnings – treating them as though they are frivolous requests coming from oversensitive people – they completely undermine the seriousness of conditions like PTSD. **What you’re saying to survivors is that PTSD isn’t a condition that you recognize or care about, and that you have no interest in helping folks who are dealing with such a devastating disorder. Content warnings make content more accessible for people with PTSD because it allows them to have fair warning and choose to engage with that material when they’re in a place that allows them to do so. When you oppose those warnings, you’re saying that PTSD isn’t a legitimate enough condition to warrant a slight adjustment** in how we present material so that folks dealing with this disorder can actually participate when they’re ready and able. In other words, you’re suggesting that you just don’t care. And that’s pretty lousy.

#### Their position is one of privilege – telling survivors what’s best for them and most “real world” is oppressive.

**Finch:** Finch, Sam Dylan [Sam Dylan Finch a Contributing Writer for Everyday Feminism. He is queer writer, activist, and educator based in the San Francisco Bay Area.] “When You Oppose Trigger Warnings, You’re Really Saying These 8 Things.” *Everyday Feminism.* July 2015. RP

**I’ve heard a lot of folks who oppose content warnings saying to me, “Welcome to the real world!** If you can’t deal with this article, how are you going to deal with real life?” **You don’t need to tell a survivor that “the real world” is hard, because they already know that. They’re already living in it, trying to survive and trying to heal. And your refusal to include content warnings takes already difficult circumstances and makes them even harder.** What’s the problem with making writing, film, and (yes) classrooms more accessible for people with trauma? **Even if the rest of the world is going to be a challenge, why add an additional struggle onto their plate? It’s like forcing someone to wear heavy weights while they run a marathon, under the guise that “running is hard, and if you can’t deal with the weight, maybe you shouldn’t run a marathon!” Yes, the real world sucks. Survivors know that better than anyone. So we should work hard to make safe spaces wherever it’s possible to do so – especially when it’s as easy as adding a content warning.**

#### Content warnings are key to accessibility and free choice.

**Finch:** Finch, Sam Dylan [Sam Dylan Finch a Contributing Writer for Everyday Feminism. He is queer writer, activist, and educator based in the San Francisco Bay Area.] “When You Oppose Trigger Warnings, You’re Really Saying These 8 Things.” *Everyday Feminism.* July 2015. RP

[**Folks with disabilities like PTSD, anxiety, and phobias**](http://everydayfeminism.com/2014/09/ally-people-invisible-disabilities/) **deserve to be able to make educated decisions about whether or not they engage with triggering content. It allows them to access your work or your classroom – namely, by ensuring that they are in the right place to participate. We label the deep end of a swimming pool, for example, so that folks who can’t swim can make a smart decision about whether or not they should be on that end of the pool.** We create ratings for movies so that parents can decide if their children should be watching violent films. **We label foods that have allergens so that folks with allergies can decide if they should eat that particular food. We would never tell someone who can’t swim that they’re “too sensitive” for asking how deep the water is, tell a child “welcome to the real world” as we turn on a horror film, or tell someone with allergies to just “get over it” and eat some peanut butter. Content warnings operate on the same principle. They’re there to prevent danger or distress, so that, like labeling the deep end of a pool, people can make smart choices about where they’re going to swim** (or, in this case, what they’re going to read or watch). **Content warnings make content more accessible by allowing people to make the right choice and avoid threatening situations that can jeopardize our mental health. It’s not unreasonable to ask for those warnings, especially when they impact a great number of people.**

### Jamison

#### Speech zones are key for public safety – they’re crowd control at protests.

**Jamison:** Jamison, Jeffrey [Contributor, ACS] “’Free-Speech Zones’ Balancing First Amendment Rights with Government Interests.” *American Constitution Society.* August 2004. RP

During a demonstration at the 1984 Republican National Convention, Gregory Lee Johnson was arrested for burning an American flag. Johnson's conviction for desecrating a venerated object was eventually overturned by an appeals court. The Supreme Court, in affirming the appeals court's decision, declared "[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." **While the Court has continually held that the content of a protestor's speech is virtually beyond reproach (there are always exceptions to the rule), it has also held, with equal vigor, "even in a public forum the government may impose reasonable restrictions on the time, place, or manner of protected speech**, provided the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information." "**Free-speech zones," like the one employed at the 2004 Democratic Nation Convention (DNC) in Boston and ones planning to be used during the 2004 Republican National Convention (RNC) in New York, are a product of these restrictions**. These "free-speech zones" are the source of considerable controversy as critics, from across the political spectrum, question whether they serve a legitimate, significant government interest or are an infringement upon our First Amendment rights. This is where the "free-speech zone" debate lies, where does government interest begin and First Amendment rights end? "Free-speech zones" were first introduced, according to Nicholas Riccardi of LA Times, during the 1992 Presidential Conventions, but under the more fitting label of, "protest zones" (a rose by any other name...). The "free-speech zones" associated with the 2004 Republican and Democratic National Conventions have drawn considerable indignation from a variety of critics. Donna Lieberman, executive director of the New York Civil Liberties Union, argues, "[t]he notion of a free-speech zone is sort of oxymoronic. What it belies is the converse, which is the no free-speech zone, which is everything but." Dahlia Lithwick, in her New York Times guest column, declared the "'free-speech zone' at the Democratic convention in Boston last month was an affront to the spirit of the Constitution. The situation will be only slightly better when the Republicans gather this month in New York." The Dayton Beach News-Journal opined, "[a]t the Democratic National Convention...protesters [were] being corralled in 'free-speech zones' that are nothing less than holding pens...Protesters [were] essentially out of sight of the convention hall, segregated both geographically and physically by concrete and chicken-wire barriers, with train tracks on two sides and a side street on the third. They'll be similarly corralled away from Madison Square Garden when the Republican National Convention kicks off in New York City Aug. 29" (click here and here for pictures from the Boston "free-speech zone"). Lawsuits filed in both Boston and New York (more will be potentially filed in New York as the convention nears) argued that the use of these "free-speech zones" was overly broad, denying demonstrators their right, "to be within sight and sound of their intended audience, in this case, the delegates on their way into the Convention." Representatives of the protestors added that the use of "pens" or "free-speech zones," especially as designed in Boston and New York, were "a dangerous practice designed to prevent people from exercising their free speech and assembly rights." **Defenders of these "free-speech zones" argue that they serve to promote the significant security interests of the government. George Henderson, Assistant U.S. Attorney, defended the Boston "free-speech zone" arguing that, unlike traditional events held at the site of the 2004 DNC, "[w]e think the security risks and the people who are going to be in this convention are different...We have greater risks, we have very high people in government, and the need for good protection is very important.''** Police officials in New York claimed, as reported in Judge Sweet's opinion, that the use of "pens" for protestors was essential to the city's crowd control and safety interests.

### Hamilton

#### Many schools, such as UC schools, are dependent on federal funds

**Hamilton February 2017:** Hamilton, Matt [Contributor, LA Times] “It’s a Clash of Free Speech and Hate Speech as Milo Yiannopoulos is Shut Down at UC Berkeley.” *LA Times.* February 2, 2017. RP

**How dependent is the UC system on federal funding?** Very dependent**. The UC’s total budget generally runs well over $20 billion, but several billion of that comes directly from the federal government. “Federal funds are the university’s single most important source of support for research, generating $2.8 billion and accounting for nearly 51% of all university research expenditures in 2013-14,”** according to a UC report. “While UC researchers receive support from virtually all federal agencies, the National Institutes of Health and the National Science Foundation are the two largest sponsors, accounting for nearly 80% of UC’s federal research contract and grant awards.” UC, for example, manages the Lawrence Berkeley National Laboratory, which gets more than $700 million in federal funds, that report said.

#### Trump couldn’t cut funds.

**Hamilton February 2017:** Hamilton, Matt [Contributor, LA Times] “It’s a Clash of Free Speech and Hate Speech as Milo Yiannopoulos is Shut Down at UC Berkeley.” *LA Times.* February 2, 2017. RP

**It’s hard to know whether Trump’s tweet was actually suggesting a policy change or simply commenting on the protests at Berkeley. But it would likely be hard to segregate much of federal funding from just one university given that it involves programs that provide money to many different institutions and activities.** As for federal student aid, UC got more than $1.6 billion in 2014. The UC’s medical facilities got $2.8 billion in federal money.

### Holmes

#### Their rejection of trigger warnings starts from a standpoint of privilege – they avoid psychological violence.

**Holmes:** Holmes, Lindsay [Contributor, The Huffington Post] “A Quick Lesson On What Trigger Warnings Actually Do.” *The Huffington Post.* August 2016. RP

“You will find that we expect members of our community to be engaged in rigorous debate, discussion and even disagreement,” part of the note reads. “At times this may challenge you and even cause discomfort.” **The problem with this interpretation of trigger warnings is that it presumes all participants have the same level of privilege. But many discussions are not just intellectual exercises for everyone ― people who face discrimination, have experienced violence or simply struggle with brain chemistry are at a disadvantage because they’re potentially dealing with a mental health issue. A desire to be warned about potential triggers has nothing to do with people not wanting to “challenge” themselves academically. What’s more, research clearly shows that atmospheres that promote negative stereotypes can act as barriers to treatment, furthering stigma and causing additional psychological trauma.**

### Delgado and Yun 95

#### Calleros is wrong – counterspeech is only sometimes effective and laws should supplant it – not all schools are supportive.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “THE SPEECH WE HATE”: FIRST AMENDMENT TOTALISM, THE ACLU, AND THE PRINCIPLE OF DIALOGIC POLITICS.” *Arizona State Law Journal.* Winter 1995. RP

The two of us were pleased to read Professor Charles Calleros' article, Paternalism, Counterspeech, and Campus Hate-Speech Codes: A Reply to Delgado and Yun, which the Arizona State Law Journal editors were kind enough to advance. Responding to two articles of ours, one in California's and the other in Vanderbilt's law review, both arguing for limitations on hate speech against racial and sexual minorities and women, **Professor Calleros charges that we have given inadequate attention to counterspeech as a possible remedy. Citing examples from Stanford and his own university, Calleros shows how talking back in an effort to raise consciousness empowered the minority victims of hate speech and educated the campus community-all this without resorting to constitutionally troublesome and heavy-handed disciplinary procedures. Nothing that we said in either of the two articles causes us to disagree with Professor Calleros. Talking back sometimes works**. We would just note two reservations. **The first is that the talking back solution puts the onus on young minority undergraduates to redress the harm of hate speech. This is a burden to them, one they must shoulder in addition to getting their own educations. In other words, in addition to educating themselves, they must educate the entire campus community, and do so every time a racial incident takes place. Second, it would be a serious mistake for Professor Calleros' readers to generalize from his sunny and optimistic experience. Not every setting is as progressive, supportive, and loving as A.S.U. and Stanford University. Some campuses do not enjoy a strong norm of civility or respect for people \*1282 of color**. And this is certainly true of hundreds of noneducational institutions, such as the military, fraternities, and certain sport teams. And it is even more true of the many ugly street encounters minorities suffer daily. **In many of these settings, talking back is not an option. In others, it would be foolhardy, because of the imbalance of power. Ivory tower academics must be careful of generalizing from one or two experiences in which speech-their favorite mechanism-seemingly has worked.** The social history of pornography and hate speech in the United States argues for caution, and for a multitude of approaches, not just one. In general, we believe that traditional defenders of free speech must beware of the tendency to light upon a single solution to a complex problem. The purpose of this essay is to explore a type of unitary or essentialist thinking that we find prevalent in First Amendment absolutist circles. **Although we welcome Calleros' article, we think that it has overtones of this simplistic one-size-fits-all approach.** It is in the hope that the future discussion of hate speech will someday exhibit the kind of nuance that we see in other areas of constitutional law, for example equal protection, that we write this essay.

#### Speech codes don’t erode democratic protections – they increase them – other countries prove.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “THE SPEECH WE HATE”: FIRST AMENDMENT TOTALISM, THE ACLU, AND THE PRINCIPLE OF DIALOGIC POLITICS.” *Arizona State Law Journal.* Winter 1995. RP

**If protecting hate speech and pornography were essential to safeguarding freedom of inquiry and a flourishing democratic politics, we would expect to find that nations that have adopted hate speech rules and curbs against pornography would suffer quickly a sharp erosion of the spirit of free inquiry. But this has not happened. A host of industrialized nations, including Sweden, Italy, Canada, and Great Britain, have instituted laws against hate speech and hate propaganda**, in many cases to comply with international treaties and conventions requiring such action. Many of these countries traditionally respect free speech at least as much as the United States does. **No such nation has reported any erosion of the atmosphere of free speech or debate. At the same time, the United States, which until recently has refused to put such rules into effect, has a less than perfect record of protecting even political speech. United States agencies have persecuted communists, hounded Hollywood writers out of the country, and harassed and badgered such civil rights leaders as Josephine Baker, Paul Robeson, and W. E. B. DuBois in a campaign of personal and professional smears** that ruined their reputations and destroyed their ability to earn a living. In recent times, conservatives inside and outside the Administration have disparaged progressives to the point where many are now afraid to describe themselves \*1291 as “liberals.” Controversial artists are denied federal funding. Museum exhibits that depict the atomic bombing of Hiroshima have been ordered modified. **If political speech lies at the center of the First Amendment, its protection seems to be largely independent of what is taking place at the periphery. There may, indeed, be an inverse correlation. Those institutions most concerned with social fairness have proved to be the ones most likely to promulgate anti-hate speech rules. Part of the reason seems to be the recognition that hate speech can easily silence and demoralize its victims, discouraging them from participating in the life of the institution. If so, enacting hate speech rules may be evidence of a commitment to democratic dialogue, rather than the opposite, as some of its opponents maintain.**

#### Protecting hateful speech for the sake of legal precedent condones oppression.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “THE SPEECH WE HATE”: FIRST AMENDMENT TOTALISM, THE ACLU, AND THE PRINCIPLE OF DIALOGIC POLITICS.” *Arizona State Law Journal.* Winter 1995. RP

A second reason why we ought to distrust the core-periphery argument is that it rests on a paradoxical metaphor that its proponents rarely if ever explain or justify. Suppose, for example, that one were in the business of supplying electricity to a region. One has competitors-private utility companies, suppliers of gas heaters, and so on. Ninety-nine percent of one's business consists of supplying electricity to homes and businesses, but the business also supplies a small amount of electricity to teenagers to recharge the batteries of their Walkmans. It would surely be a strange business decision to focus all or much of one's advertising campaign on the much smaller account. Or, take a more legal example. Protecting human security is surely a core value for the police. Yet, it would be a peculiar distribution of police services if a police chief were to reason: human life is the core value which we aim to protect; therefore, we will devote the largest proportion of our resources toward apprehending shoplifters and loiterers. There are situations in which the core-periphery argument does make sense. Providing military defense of a territory may be one; ecology, where protecting lizards may be necessary in order to protect hawks, may be another. **But ordinarily, the suggestion that to protect a value or thing at its most extreme reaches is necessary in order to protect it at its core requires, at the very least, an explanation or some offer of a connection. Yet, defenders of hate speech who deploy this argument have not provided one. And, in the meantime, a weak argument does great harm. It treats in grand, exalted terms the harm of suppressing racist speech, drawing illegitimate support from the broad social justification-social dialogue among citizens. In contrast, the harm to hate speech's victims, out on the periphery, is treated atomistically**, as though it were an isolated event, a one-time-only affront to feelings. An injury characterized in act utilitarian terms obviously cannot trump an interest couched in rule **utilitarian ones. The Nazi, for example, derives a halo effect from other quite legitimate and valuable cases of speech, while the black is seen as a lone, quirky grievant with hypersensitive feelings**. But, in reality, hate speech is part of a concerted set of headwinds, including many other cases of hate speech, that a particular African-American victim will experience over the course of his or her life. If we are willing to defend speech in broad social terms, we should be able to consider systemic, concerted harms as well. The “speech we hate” argument draws plausibility only by ignoring this asymmetry: it draws on a social good to justify an evil deemed only individual, but which in fact is concerted and society-wide. The unfairness of collapsing the periphery and the center as absolutists do would be made clear if we rendered the argument: “We protect the speech they hate in order to protect that which we love.” But not only is the argument unfair in this sense, it ignores what makes hate speech peripheral as speech in the first place. Face to face hate speech-slurs, insults, put-downs, and epithets-are not referential. The recipient learns nothing new about himself or herself. Rather, the speech elements are more like performatives, relocating the speaker and victim in social reality. Hate speech is not about the real, but the hyperreal; a Willie Horton ad is like an ad about jeans that makes no factual claim but merely shows a woman and a car.

#### Legal modeling is non-unique and empirically denied – we limit fighting words.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “THE SPEECH WE HATE”: FIRST AMENDMENT TOTALISM, THE ACLU, AND THE PRINCIPLE OF DIALOGIC POLITICS.” *Arizona State Law Journal.* Winter 1995. RP

Every periphery is another principle's core; that is the nature of a multivalent constitutional system like ours. Principles limit other ones: X's right to privacy limits Y's right to freedom of action, and so on. **Indeed, the idea of a constitutional principle, like free speech, that has a core and a periphery would be incoherent without the existence of other values** (such as privacy or reputation) to generate the limit that accounts for the idea of a periphery. **Thus, commercial and defamatory speech, which have a lesser degree of constitutional protection than political speech, are subject to limits not because they are not speech at all, but because they implicate other values that we hold. And the same is true of speech that constitutes a threat, provokes a fight, defrauds customers, or divulges an official secret. All these and dozens of other “exceptions” to the First Amendment are peripheral, and subject to limits, precisely because they reflect other principles, such as security, reputation, peace, and privacy. To argue, then, that speech must be protected at the most extreme case even more assiduously than when its central values are at stake is either to misunderstand the nature of a constitutional continuum, or to argue that the Constitution in effect has only one value.**

#### If they win legal modeling matters, vote neg – we should model equality by not allowing hate speech.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “THE SPEECH WE HATE”: FIRST AMENDMENT TOTALISM, THE ACLU, AND THE PRINCIPLE OF DIALOGIC POLITICS.” *Arizona State Law Journal.* Winter 1995. RP

**Every totalist argument is indeterminate, because it can be countered easily by an opposite and equally powerful countervailing totalism. To continue with the hate speech example, imagine that someone (say, the NAACP Legal Defense and Education Fund) argued in the following fashion: (1) Equality is a constitutional value; (2) the only way effectively to promote equality is to assure that it is protected everywhere; (3) therefore, whenever equality collides with another value, such as free speech, equality must prevail**. “We must protect the equality we hate, as much as that which we hold dear.” Now we would have two values, the defenders of which are equally convinced that their own value should reign supreme. Each regards the other's periphery as unworthy of protection. To be sure, balancing may be troublesome because it can disguise the political value judgments a judge makes on his or her way to a decision. [FN78] But totalism is worse-it gives the possessor permission not even to enter the realm of politics at all. At least, balancing encourages the decisionmaker to be aware and take into account the various values and interests at stake in a controversy. With totalism, one has no need to compromise or consider the other side. One finds oneself outside the realm of politics, and instead, inside that of sheer power.

#### Minority voices are ignored in the marketplace of ideas if we allow hate – empirics go neg.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “THE SPEECH WE HATE”: FIRST AMENDMENT TOTALISM, THE ACLU, AND THE PRINCIPLE OF DIALOGIC POLITICS.” *Arizona State Law Journal.* Winter 1995. RP

With hate speech and pornography, heeding the ACLU's totalist argument introduces special dangers of its own. **Hate speech lies at the periphery of the First Amendment, as the proponents of the totalist argument quickly concede. Yet the reason why hate speech does so is that it implicates the interest of another group, minorities, in not being defamed, reviled, stereotyped, insulted, badgered, and harassed. Permitting a large number of social actors to portray a relatively powerless social group in this fashion helps construct a stigma-picture or stereotype that describes members of the second group as lascivious, lazy, carefree, immoral, stupid, and so on. This stereotype guides action, making life much more difficult for minorities in transactions that clearly matter**: getting a job, renting an apartment, hailing a cab. But it also diminishes the credibility of minority speakers, inhibiting their ability to have their points of view taken seriously, in politics or anywhere else-surely a result that is at odds with the First Amendment and the marketplace of ideas. This is an inevitable consequence of treating peripheral regions of a value as entitled to the same weight we afford that value when it is centrally implicated: We convey the impression that those other values-the ones responsible for the continuum in the first place-are of little worth. And when those other values are central to the social construction of a human being or social group, the dangers of undervaluing their interests increase sharply. Their interests are submerged today-in the valuing a court or decisionmaker is asked to perform. And their interests are submerged in the future, because they are thereafter the bearers of a stigma, one which means they need not be taken fully into account in future deliberations. Permitting one social group to speak disrespectfully of another habituates and encourages speakers to continue speaking that way in the future. The way of speaking becomes normalized, inscribed in hundreds of plots, narratives, and scripts; it becomes part of culture, what everyone knows. The reader may wish to reflect on changes he or she surely has observed over the last fifteen years or so**. During the civil rights era of the sixties and early seventies, African- Americans and other minorities were spoken of respectfully. Then, beginning in the late seventies and eighties, racism was spoken in code. Now, however, op-ed columns, letters to the editor, and political speeches deride and blame them outspokenly. Antiminority sentiment need no longer be spoken in code but can be proclaimed outright. We have changed our social construct of the black from unfortunate victim and brave warrior to welfare leeches, unwed mothers, criminals, and untalented low-IQ affirmative action beneficiaries who take away jobs from more talented and deserving whites. The slur, sneer, ethnic joke, and most especially face- to-face hate speech are the main vehicles that have made this change possible.**

#### The idea of legal precedent being set by defending hate speech turns a blind eye to oppression that exists now – the ACLU defending Nazis and racists just perpetuates unjust material conditions.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “THE SPEECH WE HATE”: FIRST AMENDMENT TOTALISM, THE ACLU, AND THE PRINCIPLE OF DIALOGIC POLITICS.” *Arizona State Law Journal.* Winter 1995. RP

As we have seen, the extreme case (or core-periphery) argument rests on an unexamined, paradoxical metaphor. It adopts a view of the Constitution and of dialogue that is at odds with the one we hold. It mistakenly treats subordinate principles as though they were people and ends in themselves. It treats the interests of minorities as though they were of little weight, or as fully protected by merely protecting speech. It ignores the experience of other industrialized nations that have instituted hate-speech reforms without injurious consequences. What accounts for its rhetorical attraction and staying power? We believe that the principal reason is that hate speech and pornography today do not lie at the periphery of the First Amendment, as the ACLU and other advocates urge, but at its center. In former times, society was much more structured. Citizens knew their places. Women and blacks understood that they were not the equals of white men-the Constitution formally excluded them - and coercive social and legal power reminded them if they were ever tempted to step out of line. It was unnecessary to reinforce this constantly-an occasional reminder would do. Today, however, the formal mechanisms that maintained status and caste are gone or repealed. All that is left is speech and the social construction of reality. **Hate speech has replaced formal slavery, Jim Crow laws, female subjugation, and Japanese internment as a means to keep outsider groups in line**. In former times, political speech was indeed the center of the First Amendment. Citizens (white, property-owning males, at any rate) took a lively interest in politics. They spoke, debated, wrote tracts, and corresponded with each other about how the Republic ought to be governed. They did not speak much about whether women were men's equals, should be allowed to hold jobs or vote, whether blacks were the equals of whites, because this was not necessary-the very ideas were practically unthinkable. Today, the situation is reversed. Few Americans vote, or can even name their representative in Washington. [FN99] Politics has deteriorated to a once-every-four-years ritual of attack ads, catch phrases, sound bites, and image manicuring. At the same time, however, politics in the sense of jockeying for social position has greatly increased in intensity and virulence. Males are anxious and fearful of advances by women; whites fear crime and vengeful behavior from blacks and other minorities; and so on. Hate speech today is a central weapon in the struggle by the empowered to \*1299 maintain their position in the face of formerly subjugated groups clamoring for change. It is a means of disparaging the opposition while depicting one's own resistance to sharing opportunities as principled and just. **Formerly, the First Amendment and free speech were used to make small adjustments within a relatively peaceful political order consisting of propertied white males. Now it is used to postpone macroadjustments and power-sharing between that group and others: It is, in short, an instrument of majoritarian identity politics.** Nothing in the Constitution (at least in the emerging realist view) requires that hate speech receive protection. But ruling elites are unlikely to relinquish it easily, since it is an effective means of postponing social change. In the sixties, it was possible to believe Harry Kalven's optimistic hypothesis that gains for blacks stemming from the gallant struggle for civil rights would end up benefiting all of society. It was true for a time, at least, that the hard-won gains by a decade of civil rights struggle did broaden speech, due process, and assembly rights for whites as well as blacks. Today, however, there has been a stunning reversal. Now, the reciprocal injury- inhibition of the right to injure others-has been elevated to a central place in First Amendment jurisprudence. The injury-being muzzled when one would otherwise wish to disparage, terrorize, or burn a cross on a black family's lawn-is now depicted as a prime constitutional value. The interest convergence between black interests and broadened rights for whites lasted but a short time. **Now, the ACLU defends Aryan supremacists, while maintaining that this is best for minorities, too.** Blanket resistance to hate-speech regulations, which many college and university administrators are trying to put into place in order to advance straightforward institutional interests of their own-preserving diversity, teaching civility, preventing the ***\****loss of black undergraduates to other schools generates a great deal of business for the ACLU and similar absolutist organizations. In a sense, the ACLU and conservative bigots are hand-in-glove. Like criminals and police, they understand each other's method of operation, mentality, and objectives. There is a tacit understanding of how each shall behave, and how each shall gain from the other. **Indeed, primarily because the Ku Klux Klan and similar clients are so *bad*, the ACLU gets to feel romantic and virtuous and the rest of us, who despise racism and bigotry, are seen as benighted fools because we do not understand how the First Amendment really works. But we do. The bigot is not a stand-in for Tom Paine. The best way to preserve lizards is not to preserve hawks. Reality is not paradoxical. Sometimes,** defending Nazis is simply defending Nazis.

### McGrady

#### Zoned protests are effective – empirics confirm.

**McGrady:** McGrady, Michael [Colorado Campus Correspondent] “CU-Boulder students protest in free speech zones outside GOP debate.” October 2015. RP

**Largely overlooked by the major news outlets at last night’s CNBC Republican debate were the protesters that appeared in the free speech zones outside the debate. Campus Reform had boots on the ground during the debate and captured several images indicative of the liberal climate of Boulder**, Colorado clashing with the conservative ‘aliens,’ as the citizens of the ‘People’s Republic of Boulder’ came out in massive numbers to project multiple agendas onto the conservative presidential candidates and the donors. “They’re entitled to say what they want, whether it’s true or not.” **On what is known as Business Field at CU Boulder, caucasian Black Lives Matters protestors made a statement with an inflatable elephant with the word “racism” pasted to it, as well as a giant Donald Trump puppet. Many protesters also shouted “Bernie 2016” and pushed anti-GOP sentiment.** Several of the messages were gaged at calling the GOP ‘racist’ and ‘intolerant.’ One protester, a CU Boulder senior, took the time to speak about her motivations behind “the elephant in the room.” The student, who asked to remain anonymous, represented a group called Showing Up for Racial Justice (SURJ). “We are associated with the elephant in the room, which is racism,” the protester stated. “We are a group that educates white people to what racism is.” The SURJ protester, and her cohorts, made it clear what their mission is. Specifically, the group harnessed messaging that was ‘pro-Bernie Sanders’ and was also allied with the Black Lives Matter protesters. “We ally ourselves with people of color and take appropriate actions to dismantle all racism,” she stated, adding that believes racism is an invention of white oppression. Other groups appeared wearing “white privilege” masks while holding a banner that read “Black Lives Matter.” Clowns and a folk band also made an appearance, trashing Trump and other candidates through dance and song. One clown mimicked the Trump campaign slogan, which reads, “Make America Great Again,” by chanting “Make America HATE Again.” Despite the commotion, supporters of Ted Cruz and Ben Carson mingled the crowd at one point, handing out literature and debating the protestors. Among the Carson supporters were a CU student and his father who stated they think that the labels that certain protesters are prouporting are not accurate to all Republicans. They also requested to remain anonymous. “A lot of this stuff are inaccurate generalizations,” the student stated. “In a city as liberal as this one, these generalizations are perceptions.” “They’re entitled to say what they want, whether it’s true or not,” they said when asked if protesters are entitled to make such false statements. Despite the overwhelming liberal reception, the Cruz and Carson supporters were adamant in standing by their messaging. **Other protests at the debate included an immigration rally, pro-choice activists, and supporters of federal marijuana legalization.**

### Glendon

#### The idea of rights, especially those of free speech, creates an individualistic subject that’s separated from the community.

**Glendon:** Glendon, Mary Ann [Mary Ann Glendon is the Learned Hand Professor of Law at Harvard University, and a former U.S. Ambassador to the Holy See.  She currently serves as a Commissioner of the U.S. Commission on International Religious Freedom and as a member of the Board of Supervisors of the Institute of Religious Works] “Rights Talk: The Impoverishment Of Political Discourse.” January 1991. RP

**Though sound-bites do not permit much airing of issues, they seem tailor-made for our strident language of rights. Rights talk itself is relatively impervious to the other more complex languages we still speak in less public contexts, but it seeps into them, carrying the rights mentality into spheres of American society where a sense of personal responsibility and of civic obligation traditionally have been nourished**. An intemperate rhetoric of personal liberty in this way corrodes the social foundations on which individual freedom and security ultimately rest. **While the nations of Eastern Europe are taking their first risk-laden and faltering steps toward democracy, the historic American experiment in ordered liberty is thus undergoing a less dramatic, but equally fateful, crisis of its own**. It is a crisis at the very heart of the American experiment in self-government, for it concerns the state of public deliberation about the right ordering of our lives together. **In the home of free speech, genuine exchange of ideas about matters of high public importance has come to a virtual standstill**.

#### Rights discourse for specific issues separates the body politic, preventing us from achieving a common cause.

**Glendon:** Glendon, Mary Ann [Mary Ann Glendon is the Learned Hand Professor of Law at Harvard University, and a former U.S. Ambassador to the Holy See.  She currently serves as a Commissioner of the U.S. Commission on International Religious Freedom and as a member of the Board of Supervisors of the Institute of Religious Works] “Rights Talk: The Impoverishment Of Political Discourse.” January 1991. RP

**This book argues that the prominence of a certain kind of rights talk in our political discussions is both a symptom of, and a contributing factor to, this disorder of the body politic. Discourse about rights has become the principal language that we use in public settings to discuss weighty questions of both right and wrong, but time and again it proves inadequate, or leads to a standoff of one right against another.** The problem is not, however, as some contend, with the very notion of rights, or with our strong rights tradition. It is with a new version of rights discourse that has achieved dominance over the past thirty years. **Our current American rights talk is but one dialect in a universal language that has developed during the extraordinary era of attention to civil and human rights in the wake of World War II. It is set apart from rights discourse in other liberal democracies by its starkness and simplicity, its prodigality in bestowing the rights label, its legalistic character, its exaggerated absoluteness, its hyperindividualism, its insularity, and its silence with respect to personal, civic, and collective responsibilities.** This unique brand of rights talk often operates at cross-purposes with our venerable rights tradition. It fits perfectly within the ten-second formats currently preferred by the news media, but severely constricts opportunities for the sort of ongoing dialogue upon which a regime of ordered liberty ultimately depends. **A rapidly expanding catalog of rights — extending to trees, animals, smokers, nonsmokers, consumers, and so on — not only multiplies the occasions for collisions, but it risks trivializing core democratic values. A tendency to frame nearly every social controversy in terms of a clash of rights (a woman's right to her own body vs. a fetus' right to life) impedes compromise, mutual understanding, and the discovery of common ground.** A penchant for absolute formulations ("I have the right to do whatever I want with my property") promotes unrealistic expectations and ignores both social costs and the rights of others. A near-aphasia concerning responsibilities makes it seem legitimate to accept the benefits of living in a democratic social welfare republic without assuming the corresponding personal and civic obligations.

#### Rights create selfishness.

**Glendon:** Glendon, Mary Ann [Mary Ann Glendon is the Learned Hand Professor of Law at Harvard University, and a former U.S. Ambassador to the Holy See.  She currently serves as a Commissioner of the U.S. Commission on International Religious Freedom and as a member of the Board of Supervisors of the Institute of Religious Works] “Rights Talk: The Impoverishment Of Political Discourse.” January 1991. RP

**As various new rights are proclaimed or proposed, the catalog of individual liberties expands without much consideration of the ends to which they are oriented**, their relationship to one another, to corresponding responsibilities, or to the general welfare. **Converging with the language of psycho- therapy, rights talk encourages our all-too-human tendency to place the self at the center of our moral universe. In tandem with consumerism and a normal dislike of inconvenience, it regularly promotes the short-run over the long-term, crisis intervention over preventive measures, and particular interests over the common good**. Saturated with rights, political lan- guage can no longer perform the important function of facilitating public discussion of the right ordering of our lives together. Just as rights exist for us only through being articulated, other goods are not even available to be considered if they can be brought to expression only with great difficulty, or not at all. My principal aim in the chapters that follow has been to trace the evolution of our distinctive current rights dialect, and to show how it frequently works against the conditions required for the pursuit of dignified living by free women and men. With stories and examples drawn from disputes over flag-burning, Indian lands, plant closings, criminal penalties for homosexual acts, eminent domain, social welfare, child support, and other areas, I **have endeavored to demonstrate how our simplistic rights talk simultaneously reflects and distorts American culture. It captures our devotion to individualism and liberty, but omits our traditions of hospitality and care for the community**. In the images of America and Americans that it projects, as well as in the ideals to which it implicitly pays homage, our current rights talk is a verbal caricature of our culture — recognizably ours, but with certain traits wildly out of proportion and with some of our best features omitted. Our rights-laden political discourse does provide a solution of sorts to the communications problems that beset a heterogeneous nation whose citizens decreasingly share a common history, literature, religion, or customs. But the "solution" has become part of the problem. The legal components of political discourse, like sorcerers' apprentices, have taken on new and mischief-making connotations when liberated from their contexts in the speech community of lawyers. (A person has no duty to come to the aid of a "stranger.") With its non-legal tributaries rapidly dwindling, political rhetoric has grown increasingly out of touch with the more complex ways of speaking that Americans employ around the kitchen table, in their schools, workplaces, and in their various communities of memory and mutual aid.

### Byrne

#### Advocacy – ban racial insults but not ideas.

**Byrne:** Byrne, J. Peter [Associate Professor, Georgetown University Law Center.] “Racial Insults and Free Speech Within the University.” *Georgetown University Law School.* 1991. RP

**This article examines the constitutionality of university prohibitions of public expression that insults members of the academic community by di- recting hatred or contempt toward them on account of their race. I Several thoughtful scholars have examined generally whether the government can penalize citizens for racist slurs under the first amendment**, but to the limited extent that they have discussed university disciplinary codes they have as- sumed that the state university is merely a government instrumentality sub- ject to the same constitutional limitations as, for example, the legislature or the police. 2 **In contrast, I argue that the university has a fundamentally different relationship to the speech of its members than does the state to the speech of its citizens. On campus, general rights of free speech should be qualified by the intellectual values of academic discourse. I conclude that the protection of these academic values, which themselves enjoy constitutional protection, permits state universities lawfully to bar racially abusive speech,** even if the state legislature could not constitutionally prohibit such speech throughout society at large. **At the same time, however, I assert that the first amendment renders state universities powerless to punish speakers for advo- cating any idea in a reasoned manner.**

#### This is a definition of racial insult!

**Byrne:** Byrne, J. Peter [Associate Professor, Georgetown University Law Center.] “Racial Insults and Free Speech Within the University.” *Georgetown University Law School.* 1991. RP

**It is necessary at the outset to choose a working definition of a racial insult**. This definition, however, is necessarily provisional; any such definition implies the writer's views on the boundaries of constitutionally protected offensive speech, and the reader cannot be expected to swallow the definition until she has had the opportunity to inspect the writer's constitutional premises. Having offered such a caution, **I define a racial insult as a verbal or symbolic expression by a member of one ethnic group that describes another ethnic group or an individual member of another group in terms convention- ally derogatory, that offends members of the target group, and that a reason- able and unbiased observer, who understands the meaning of the words and the context of their use, would conclude was purposefully or recklessly abusive.** Excluded from this definition are expressions that convey rational but offensive propositions that can be disputed by argument and evidence. **An insult, so conceived, refers to a manner of speech that seeks to demean rather than to criticize, and to appeal to irrational fears and prejudices rather than to respect for others and informed judgment.**3

#### Racial insults contribute nothing

**Byrne:** Byrne, J. Peter [Associate Professor, Georgetown University Law Center.] “Racial Insults and Free Speech Within the University.” *Georgetown University Law School.* 1991. RP

What constitutional status can racial insults claim in society at large? At first blush, one might be surprised that the first amendment protects insults to individuals or groups at all. **Not even the staunchest supporter of the most absolute view of first amendment protection argues that racial insults have any significant social or individual value. Female and minority writers and witnesses have chronicled in moving terms the hurt and alienation that such insults inflict. Moreover, the denial of a legal remedy against the perpetrators of vilification of minorities lends credence to the view that white- dominated institutions comfortably tolerate racism through complicity or in- sensitivity. The spread of this view saps the strength of societal institutions, already frustrated in pursuit of service to all, by weakening confidence in them by an important constituency. Finally, and not least important, racial insults, which are absurd as well as demoralizing, lower the standard of dis- course about difficult and important issues to that of the least reflective and constructive members of the community.**

#### Solves reverse enforcement – there are protocols in place to check, such as student and faculty boards.

**Byrne:** Byrne, J. Peter [Associate Professor, Georgetown University Law Center.] “Racial Insults and Free Speech Within the University.” *Georgetown University Law School.* 1991. RP

**A central argument of this article has been that the university can be trusted to administer rules prohibiting racial insults because it has the proper moral basis and adequate expertise to do so.** It is not surprising, therefore, that I believe that vagueness concerns about such university rules are largely misplaced. This is not to deny that a university should adopt safeguards to protect accused students from the concerns that the courts have highlighted. **First, the rules should state explicitly that no one may be disciplined for the good faith statement of any proposition susceptible to reasoned response, no matter how offensive**. The possibility that punishment is precluded by this limitation should be addressed at every stage of the disciplinary process. **Sec- ond, some response between punishment and acquittal should be available when the university concludes that the speaker was subjectively unaware of the offensive character of his speech; these cases seem to present mainly edu- cational concerns. Third, all controversial issues of interpretation of the rules should be entrusted to a panel of faculty and students who are represen- tative of the institution**. Rules furthering primarily academic concerns about the quality of speech and the development of students should be given mean- ing by those most directly concerned with the academic enterprise rather than by administrators who may register more precisely external political pressures on the university. **Given these safeguards and a comprehensible definition of an unacceptable insult, such as the one ventured in the introduc- tion to this article,179 a court which accepts the underlying proposition that a university has the constitutional authority to regulate racial insults should not be troubled independently by vagueness.**

#### Racial insults don’t help the search for truth – they make it more difficult to find realities

**Byrne:** Byrne, J. Peter [Associate Professor, Georgetown University Law Center.] “Racial Insults and Free Speech Within the University.” *Georgetown University Law School.* 1991. RP

**The university's first commitment is to truth.** As argued above, the university does not manifest this commitment to truth by licensing all expression. Rather, truth is equated with knowledge, precepts, or hypotheses tentatively established through painstaking, expert, and disinterested in- quiry.95 Students come to the university to learn disciplines of thought, whether in the sciences or the humanities, that are more likely to solve problems or contribute to constructive discourse than the more subjective, flabbier, and less coherent thinking to which they were limited upon matriculation. The commitment to forms of thought and expression conducive to truth and coherence lies at the core of academic values; without this commitment, the university is a scam. **Racial insults have no status among discourse committed to truth. They do not attempt to establish, improve, or criticize any proposition or object of inquiry. They do not even have enough truth value to be false, to represent a discarded alternative idea. Racial insults communicate only scorn or hatred irrationally based on immutable characteristics of the target. Their goal can only be to diminish the victim or to accentuate the belonging of the speaker to a group outside of the despised circle**. They may relieve emotional tension within the speaker, but only at the greater cost of increasing tension within and among the audience. **Thus, the university's commitment to truth provides a basis for proscribing racial insults. The university justifiably could conclude that racial insults neither contribute to the pursuit of truth nor shed light on any issue of value. Rather, racial insults hamper the search for truth by breeding tribal commitments and animosities that constrain rational discussion and by fostering tensions that cloud clear-eyed perception and discredit judicious reflection. For example, racial insults may contribute to an atmosphere that causes scholars or students in the target group either to censor themselves in academic analysis or exposition or to pursue blindly the goals of their group without regard to the long-term interests of the entire academic community.**

#### Diversity and tolerance demand a reduction in racial insults – they also hinder freedom.

**Byrne:** Byrne, J. Peter [Associate Professor, Georgetown University Law Center.] “Racial Insults and Free Speech Within the University.” *Georgetown University Law School.* 1991. RP

Humanism is a second core value of the university. The university is com- mitted to the intellectual development of its students**. The students attend to acquire knowledge and gain intellectual skills. Influences that interfere with this goal may be prohibited. Thus, just as universities have been allowed to exclude commercial solicitation from dormitories and require that demonstrations be held beyond earshot of the library,97 they could also require students to wear shirts in class and exclude television sets from dormitories**. In each case, preventing distraction of the student from the acknowledged work of the school permits limitation on a form of expression guaranteed to individuals in the wider world. **Racial slurs more profoundly burden the striving toward educational attainments of their victims than do noise or inane sales patter. Minority scholars have been eloquent in expressing the disabling effects racial insults work on minority students and faculty.** These harms are exacerbated by the social position of minorities at most American universities where until recently they studied only in small numbers. Racial insults obviously burden the ability of targets to pursue their studies; infuriated and embarrassed, their emotions may push them toward self-protection or retaliation. The university should have an obligation to protect its students from such disabling harassment. **If an employer failed to take corrective action when an employee was racially insulted or sexually harassed, the employee would have an action against the employer under Title VII for fostering a hostile work environment**; it seems that only a lack of imagination on the part of the bar has precluded analogous actions against universities under Title VI.' **Humanist values support the prohibition of racial insults even apart from the need to protect minority students in their pursuit of education. Ethnic and national diversity among students and faculty contribute to the cosmopolitan culture of learning that has always reached beyond physical and tri- bal boundaries in search of merit and knowledge**. During its formative years in the Middle Ages, the university recruited faculty and students from great distances; indeed, the medieval term most used for the university, the studium generale, emphasized that faculty and students came to study there from all the nations of Europe.101 The introduction of students to the inter- national culture of the university has never been a more necessary part of education than today, when economic, environmental, and political chal- lenges force the peoples of the world into greater contact and cooperation regardless of their prejudices. **Racial insults are serious solecisms within the cosmopolitan culture of higher education, and a university has failed if it has not conveyed to its students that racial insults are as unacceptable as the mental sloth and provincial ignorance they exemplify.**

#### Speech codes are constitutional

**Byrne:** Byrne, J. Peter [Associate Professor, Georgetown University Law Center.] “Racial Insults and Free Speech Within the University.” *Georgetown University Law School.* 1991. RP

A reader might be forgiven if she at first views as absurd an argument that

prohibitions on certain forms of speech are themselves protected under the first amendment. But constitutional values frequently conflict, even within the first amendment, such as when courts must accommodate the guarantees of religious free exercise and disestablishment. In an effort to preserve uni- versity authority protected **by** academic freedom, constitutional guarantees to individuals are sometimes read narrowly. Thus, in *Regents of the Univer- sity of Californiav. Bakke,****1 18*** Justice Powell sanctioned university affirmative action plans as protected **by** academic freedom, while suggesting that in a nonacademic setting such plans would violate the fourteenth amendment and Title VI. **119** Indeed, the most characteristic appearance of academic freedom in constitutional cases has been as a constitutional value balanced against or accommodated with other constitutional concerns. 20

### Post

#### Funding for public colleges is decreasing in the status quo – that means increased reliance on endowments from private donors.

**Press:** Press, Alex [The Nation] “Silence on Campus: Contingent Work and Free Speech.” *The Nation.* February 2016. RP

**Explaining the role financial needs play in decisions to censor faculty in public higher education, Robinson argues, “As public funding is cut, the administration becomes more reliant on private donors. These donors then use that leverage, threatening to withdraw donations if an administration doesn’t act.” The problem is worsening as public funds for higher education are drying up across the country, according to a recent report by the Center on Budget and Policy Priorities. As this money dwindles, administrations turn to wealthy donors, creating the conditions under which prestigious donors can sway administrator’s decisions** on how to respond to controversial faculty, if those faculty can get hired in the first place.

#### Empirics confirm – donors cut back funding at University of Illinois after a professor used hateful speech.

**Press:** Press, Alex [The Nation] “Silence on Campus: Contingent Work and Free Speech.” *The Nation.* February 2016. RP

**Conceding the difficulty of capturing the preemptive stifling of debate that comes with disposable worker status, we can take the severity of repercussions visited upon those who don’t censor themselves as indicative of the problem. Take the case of Steven Salaita, an indigenous studies scholar whose offer of a position at the University of Illinois at Urbana–Champaign was rescinded after he tweeted critically about Israel’s 2014 attack on Gaza**. A violation of academic freedom that resulted in a rare formal censure from the AAUP, for Salaita, administrative censorship is no secret. “For the uninitiated, the levels of vitriol and retribution that attend criticism of Israel can be stunning,” he writes, referencing a report authored by the Center for Constitutional Rights and Palestine Legal that details hundreds of reported acts of suppression of pro- Palestine advocacy in under two years. Salaita sued the University of Illinois for violating his rights. **While he settled out of court for $875,000, discovery findings from his lawsuit reveal the likelihood of donor influence on the decision to fire him, with the chancellor communicating with donors about Salaita’s tweets and his possible dismissal. As Salaita’s case demonstrates,** the extent of donor pressure goes a long way to explain why administrations might choose to silence speech, explains William Robinson, a professor at the University of California– Santa Barbara. In 2009, Robinson caught the attention of outside organizations that then pressured UCSB administrators to charge him with violating the university’s academic code of conduct, according to Robinson’s account of the incident, as well as details published by his supporters. **Explaining the role financial needs play in decisions to censor faculty in public higher education, Robinson argues, “As public funding is cut, the administration becomes more reliant on private donors. These donors then use that leverage, threatening to withdraw donations if an administration doesn’t act**.”

### Delgado and Yun - pressure valves

#### Speech going underground is much better than it being out in the open – people openly saying racial slurs normalizes violence.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “Pressure Valves and Blooded Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulations.” *California Law Review.* Volume 84. July 1994. RP

**The pressure valve argument holds that rules prohibiting hate speech are unwise because they increase the danger racism poses to minorities. Forcing racists to bottle up their dislike of minority group members means that they will be more likely to say or do something hurtful later.** Free speech thus functions as a pressure valve, allowing tension to dissipate before it reaches a dangerous level. 1 Pressure valve proponents argue that if minorities understood this, they would oppose antiracism rules. **The argument is paternalistic; it says we are denying you what you say you want, and we are doing it for your own good**. The rules, which you think will help you, will really make matters worse. If you knew this, you would join us in opposing them. Hate speech may make the speaker feel better, at least temporarily, but it does not make the victim safer. **Quite the contrary, the psychological evidence suggests that permitting one person to say or do hateful things to another increases, rather than decreases, the chance that he or she will do so again in the future**. 2 Moreover, others may believe it is permissible to follow suit. 3 **Human beings are not mechanical objects**. Our behavior is more complex than the laws of physics that describe pressure valves, tanks, and the behavior of a gas or liquid in a tube. **In particular, we use symbols to construct our social world, a world that contains categories and expecta- tions for "black," "woman," "child," "criminal," "wartime enemy," and so on.**5 4 Once the roles we create for these categories are in place, they govern the way we speak of and act toward members of those categories in the future.55 Even simple barnyard animals act on the basis of categories. Poultry farmers know that a chicken with a single speck of blood will be pecked to death by the others." With chickens, of course, the categories are neural and innate, functioning at a level more basic than language. **But social science experiments demonstrate that the way we categorize others affects our treatment of them**. An Iowa teacher's famous "blue eyes/brown eyes" experiment showed that even a one-day assignment of stigma can change behavior and school performance.57 **At Stanford University, Phillip Zimbardo assigned students to play the roles of prisoner and prison guard, but was forced to discontinue the experiment when some of the participants began taking their roles too seriously.** 8 And Diane Sculley's interviews with male sexual offenders showed that many did not see themselves as offenders at all. In fact, research suggests that exposure to sexually violent pornography increases men's antagonism toward women and intensifies rapists' belief that their victims really welcomed their attentions. At Yale University, Stanley Milgram showed that many members of a university community could be made to violate their conscience if an authority figure invited them to do so and assured them this was permissible and safe**." The evidence, then, suggests that allowing persons to stigmatize or revile others makes them more aggressive, not less so. Once the speaker forms the category of deserved-victim, his or her behavior may well con- tinue and escalate to bullying and physical violence. Further, the studies appear to demonstrate that stereotypical treatment tends to generalize- what we do teaches others that they may do likewise.** Pressure valves may be safer after letting off steam; human beings are not.

#### Cross country studies disprove reverse enforcement -- stopping hate speech outweighs since it harms minorities

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “Pressure Valves and Blooded Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulations.” *California Law Review.* Volume 84. July 1994. RP

**A second paternalistic argument is that enactment of hate speech rules is sure to hurt minorities because the new rules will be applied against minorities themselves**.61 A vicious insult hurled by a white person to a black will go unpunished, but even a mild expression of exasperation by a black motorist to a police officer or by a black student to a professor, for example, will bring harsh sanctions. The argument is plausibile because certain authorities are racist and dislike blacks who speak out of turn, and because a few incidents of blacks charged with hate speech for innocuous behavior have occurred. **Nadine Strossen, for example, asserts that in Canada, shortly after the Supreme Court upheld a federal hate speech code, prosecutors began charging blacks with hate offenses. But the empirical evidence does not suggest that this is the pattern, much less the rule. Police and FBI reports show that hate crimes are com- mitted much more frequently by whites against blacks than the reverse. Statistics compiled by the National Institute Against Violence and Prejudice confirm what the police reports show, that a large number of blacks and other minorities are victimized by racist acts on campus each year.' Moreover, the distribution of enforcement seems to be consistent with com- mission of the offense. Although an occasional minority group member may be charged with a hate crime or with violating a campus hate speech code, these prosecutions seem rare**.6 5 Racism, of course, is not a one-way street; some minorities have harassed and badgered whites. Still, the reverse-enforcement objection seems to have little validity in the United States. A recent study of the international aspects of hate speech regulation showed that in repressive societies, such as South Africa and the former Soviet Union, laws against hate speech have indeed been deployed to stifle dissenters and members of minority groups.6 6 Yet, this has not happened in more progressive coun- tries.67 **The likelihood that officials in the United States would turn hate speech laws into weapons against minorities seems remote.**

#### The First Amendment and free speech has historically stymied racial progress.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “Pressure Valves and Blooded Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulations.” *California Law Review.* Volume 84. July 1994. RP

**Many absolutists and defenders of the First Amendment urge that the First Amendment historically has been a great friend and ally of social reformers. Nadine Strossen, for example, argues that without free speech, Martin Luther King, Jr. could not have moved the American public as he did**. 8 Other reform movements also are said to have relied heavily on free speech.6 9 **This argument, like the two earlier ones, is paternalistic-it is based on the supposed best interest of minorities. If they understood their own best interest, the argument goes, they would not demand to bridle speech. The argument ignores the history of the relationship between racial minorities and the First Amendment. In fact, minorities have made the greatest progress when they acted in defiance of the First Amendment. The original Constitution protected slavery in several of its provisions, and the First Amendment existed contemporaneously with slavery for nearly 100 years. Free speech for slaves, women, and the propertyless was simply not a major concern for the drafters**, who appear to have conceived the First Amendment mainly as protection for the kind of refined political, scientific, and artistic discourse they and their class enjoyed. Later, of course, abolitionism and civil rights activism broke out. **But an examination of the role of speech in reform movements shows that the relationship of the First Amendment to social advance is not so simple as free speech absolutists maintain. In the civil rights movement of the 1960s, for example, Martin Luther King, Jr. and others did use speeches and other symbolic acts to kindle America's conscience.73 But as often as not, they found the First Amendment (as then understood) did not protect them**.7 4 **They rallied and were arrested and convicted; sat in, were arrested and convicted; marched, sang, and spoke and were arrested and convicted.75 Their speech was seen as too forceful, too disruptive.** Many years later, to be sure, their convictions would sometimes be reversed on appeal, at the cost of thousands of dollars and much gallant lawyering. **But the First Amendment, as then understood, served more as an obstacle than a friend**.76

#### Err neg on the empirics debate – their evidence is tainted by psychological biases – we limit things like fighting words all the time with no bad impacts.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “Pressure Valves and Blooded Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulations.” *California Law Review.* Volume 84. July 1994. RP

**An examination of the current landscape of First Amendment excep- tions reveals a similar pattern. Our system has carved out or tolerated doz- ens of "exceptions" to the free speech principle: conspiracy; libel; copyright; plagiarism; official secrets**; misleading advertising; words of threat; disrespectful words uttered to a judge, teacher, or other authority figure; and many more. 2 **These exceptions (each responding to some inter- est of a powerful group)83 seem familiar and acceptable**, as indeed perhaps they are. **But a proposal for a new exception to protect some of the most defenseless members of society, 18-year old black undergraduates at predominantly white campuses**, **immediately produces consternation**: the First Amendment must be a seamless web. It is we, however, who are caught in a web, the web of the familiar. **The First Amendment seems to us useful and valuable. It reflects our interests and sense of the world**. It allows us to make certain distinctions, toler- ates certain exceptions, and functions in a particular way we assume will be equally valuable for others. **But the history of the First Amendment, as well as the current landscape of doctrinal exceptions, shows that it is far more valuable to the majority than to the minority**, far more useful for confining change than for propelling it.8"

#### Faith in counter-speech is ahistorical and paternalistic.

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “Pressure Valves and Blooded Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulations.” *California Law Review.* Volume 84. July 1994. RP

**Defenders of the First Amendment sometimes argue that minorities should talk back to the aggressor**.85 Nat Hentoff, for example, writes that antiracism rules teach black people to depend on whites for protection, while talking back clears the air, emphasizes self-reliance, and strengthens one's self-image as an active agent in charge of one's own destiny.8 6 **The "talking back" solution to campus racism draws force from the First Amendment principle of "more speech,**" according to which additional dia- logue is always a preferred response to speech that some find troubling.87 Proponents of this approach oppose hate speech rules, then, not so much because they limit speech, but because they believe that it is good for minorities to learn to speak out. **A few go on to offer another reason: that a minority who speaks out will be able to educate the speaker who has uttered a racially hurtful remark**."8 Racism, they hold, is the product of ignorance and fear. **If a victim of racist hate speech takes the time to explain matters, he or she may succeed in altering the speaker's perception so that the speaker will no longer utter racist remarks.8 9 How valid is this argument? Like many paternalistic arguments, it is offered blandly, virtually as an article of faith. In the nature of paternalism, those who make the argument are in a position of power, and therefore believe themselves able to make things so merely by asserting them as true.90 They rarely offer empirical proof of their claims, because none is needed. The social world is as they say because it is their world: they created it that way.91**

#### Counter speech just causes minorities to be locked up and shot

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “Pressure Valves and Blooded Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulations.” *California Law Review.* Volume 84. July 1994. RP

**In reality, those who hurl racial epithets do so because they feel empowered to do so**.92 Indeed, their principal objective is to reassert and reinscribe that power. One who talks back is perceived as issuing a direct challenge to that power. The action is seen as outrageous, as calling for a forceful response. **Often racist remarks are delivered in several-on-one situ- ations, in which responding in kind is foolhardy.93 Many highly publicized cases of racial homicide began in just this fashion. A group began badger- ing a black person. The black person talked back, and paid with his life.94 Other racist remarks are delivered in a cowardly fashion, by means of graf- fiti scrawled on a campus wall late at night or on a poster placed outside of a black student's dormitory door.95 In these situations, more speech is, of course, impossible. Racist speech is rarely a mistake, rarely something that could be corrected or countered by discussion**. What would be the answer to "Nigger, go back to Africa. You don't belong at the University"? "Sir, you misconceive the situation. Prevailing ethics and constitutional interpretation hold that I, an African American, am an individual of equal dignity and entitled to attend this university in the same manner as others. Now that I have informed you of this, I am sure you will modify your remarks in the future"? 96 **The idea that talking back is safe for the victim or potentially educa- tive for the racist simply does not correspond with reality. It ignores the power dimension to racist remarks, forces minorities to run very real risks, and treats a hateful attempt to force the victim outside the human commu- nity as an invitation for discussion. Even when successful, talking back is a burden. Why should minority undergraduates, already charged with their own education, be responsible constantly for educating others?**

### Anarchist Library

#### The principles behind free speech have become coopted and de-radicalized

**The Anarchist Library:** The Anarchist Library [Organization dedicated to revolution] “Not Just Free Speech, but Freedom Itself: A Critique of Civil Liberties.” *The Anarchist Library.* 2010. RP

“**Despite the radical roots of organizations such as the American Civil Liberties Union that advocate for state protection of free expression, this form of civil liberties empties the defense of free speech of any radical content**, implying that only the state can properly guarantee our ability to express ourselves freely and thus reinforcing the power of the state above the right to free speech itself.” Across the years, anarchists have defended freedom of speech. This is important in principle: in an anarchist vision of society, neither the state or any other entity should be able to determine what we can and cannot say. It’s also important in practice: as a revolutionary minority frequently targeted for repression, we’ve consistently had our speeches, newspapers, websites, and marches attacked. **Free speech fights have figured in anarchist campaigns for a long time.** The Industrial Workers of the World fought restrictions on pro-union soapboxing by flooding jails until cities were forced to change their ordinances. Emma Goldman and Alexander Berkman passionately defended free speech in the US during World War I and in the Soviet Union after the Russian Revolution. During the Makhnovist resistance in the Ukraine and the Spanish Civil War in Catalonia, anarchist forces distinguished themselves from authoritarians both left and right by refusing to restrict the press. More recently the SHAC 7 case, in which animal rights activists were defined as terrorists simply for running a website advocating direct action, showed that speech can still bring us into conflict with the state. But anti-authoritarians aren’t the only ones who have taken up the banner of free speech**. More recently, the right wing in the US has begun to argue that the failure to give conservative views an equal footing with liberal views constitutes a suppression of their free speech. By accusing “liberal” universities and media of suppressing conservative views—a laughable assertion, given the massive structures of power and funding advancing these—they use First Amendment discourse to promote reactionary agendas. Supposedly progressive campuses reveal their true colors as they mobilize institutional power to defend right-wing territory in the marketplace of ideas, going so far as to censor and intimidate opposition**. Extreme right and fascist organizations have jumped onto the free speech bandwagon as well. In the US, Anti- Racist Action and similar groups have been largely effective in disrupting their events and organizing efforts. **Consequently, fascists now increasingly rely on the state to protect them, claiming that racist, anti-immigrant, and anti-gay organizing constitutes a form of legally protected speech—and within the framework of the ACLU, it does**. Fascist groups that are prevented from publishing their material in most other industrialized democracies by laws restricting hate speech frequently publish it in the United States, where no such laws exist, and distribute it worldwide from here. **So in practice, state protection of the right to free expression aids fascist organizing. If defending free speech has come to mean sponsoring wealthy right-wing politicians and enabling fascist recruiting, perhaps it is time for anarchists to reassess this principle**.

#### Rights are coopted by the state.

**The Anarchist Library:** The Anarchist Library [Organization dedicated to revolution] “Not Just Free Speech, but Freedom Itself: A Critique of Civil Liberties.” *The Anarchist Library.* 2010. RP

There appears to be a broad consensus in the US political spectrum in favor of the right to free speech. While opponents may quibble over the limits, such as what constitutes obscenity, pundits from left to right agree that free speech is essential to American democracy. Appeals to this tradition of unrestricted expression confer legitimacy on groups with views outside the mainstream, and both fascists and radicals capitalize on this. Lawyers often defend anarchist activity by referencing the First Amendment’s provision preventing legislation restricting the press or peaceable assembly. We can find allies who will support us in free speech cases who would never support us out of a shared vision of taking direct action to create a world free of hierarchy. **The rhetoric of free speech and First Amendment rights give us a common language with which to broaden our range of support and make our resistance more comprehensible to potential allies, with whom we may build deeper connections over time. But at what cost? This discourse of rights seems to imply that the state is necessary to protect us against itself, as if it is a sort of Jekyll and Hyde split personality that simultaneously attacks us with laws and police and prosecutors while defending us with laws and attorneys and judges. If we accept this metaphor, it should not be surprising to find that the more we attempt to strengthen the arm that defends us, the stronger the arm that attacks us will become. Once freedom is defined as an assortment of rights granted by the state, it is easy to lose sight of the actual freedom those rights are meant to protect and focus instead on the rights themselves—implicitly accepting the legitimacy of the state. Thus, when we build visibility and support by using the rhetoric of rights, we may undercut the possibility of struggle against the state itself. We also open the door for the state to impose others’ “rights” upon us.**

#### Free speech isolates radicals

**The Anarchist Library:** The Anarchist Library [Organization dedicated to revolution] “Not Just Free Speech, but Freedom Itself: A Critique of Civil Liberties.” *The Anarchist Library.* 2010. RP

In the US, many take it for granted that it is easier for the state to silence and isolate radicals in countries in which free speech is not legally protected. If this is true, who wouldn’t want to strengthen legal protections on free speech? **In fact, in nations in which free speech is not legally protected, radicals are not always more isolated—on the contrary, the average person is sometimes more sympathetic to those in conflict with the state**, as it is more difficult for the state to legitimize itself as the defender of liberty. Laws do not tie the hands of the state nearly so much as public opposition can; given the choice between legal rights and popular support, radicals are much better off with the latter. One dictionary defines civil liberty as “the state of being subject only to laws established for the good of the community.” This sounds ideal to those who believe that laws enforced by hierarchical power can serve the “good of the community”—but who defines “the community” and what is good for it, if not those in power? **In practice, the discourse of civil liberties enables the state to marginalize its foes: if there is a legitimate channel for every kind of expression, then those who refuse to play by the rules are clearly illegitimate.** Thus we may read this definition the other way around: under “civil liberty,” all laws are for the good of the community, and any who challenge them must be against it. **Focusing on the right to free speech, we see only two protagonists, the individual and the state.** Rather than letting ourselves be drawn into the debate about what the state should allow, anarchists should focus on a third protagonist—the general public. We win or lose our struggle on the terrain of how much sovereignty the populace at large is willing to cede to the state, how much intrusion it is willing to put up with. **If we must speak of rights at all, rather than argue that we have the right to free speech let us simply assert that the state has no right to suppress us. Better yet, let’s develop another language entirely.**

#### Free speech assumes an equal playing field which isn’t possible

**The Anarchist Library:** The Anarchist Library [Organization dedicated to revolution] “Not Just Free Speech, but Freedom Itself: A Critique of Civil Liberties.” *The Anarchist Library.* 2010. RP

**The discourse of free speech in democracy presumes that no significant imbalances of power exist, and that the primary mechanism of change is rational discussion. In fact, a capitalist elite controls most resources, and power crystallizes upward along multiple axes of oppression. Against this configuration, it takes a lot more than speech alone to open the possibility of social change. There can be no truly free speech except among equals**—among parties who are not just equal before the law, but who have comparable access to resources and equal say in the world they share. **Can an employee really be said to be as free to express herself as her boss, if the latter can take away her livelihood? Are two people equally free to express their views when one owns a news network and the other cannot even afford to photocopy fliers? In the US, where donations to political candidates legally constitute speech,** the more money you have, the more “free speech” you can exercise. As the slogan goes, freedom isn’t free—and nowhere is that clearer than with speech. Contrary to the propaganda of democracy, ideas alone have no intrinsic force. Our capacity to act on our beliefs, not just to express them, determines how much power we have. In this sense, the “marketplace of ideas” metaphor is strikingly apt: you need capital to participate, and the more you have, the greater your ability to enact the ideas you buy into. **Just as the success of a few entrepreneurs and superstars is held up as proof that the free market rewards hard work and ingenuity, the myth of the marketplace of ideas suggests that the capitalist system persists because everyone—billionaire and bellboy alike—agrees it is the best idea**

#### The state readjusts as soon as speech gets too radical to prevent a true criticism

**The Anarchist Library:** The Anarchist Library [Organization dedicated to revolution] “Not Just Free Speech, but Freedom Itself: A Critique of Civil Liberties.” *The Anarchist Library.* 2010. RP

**But what if, despite the skewed playing field, someone manages to say something that threatens to destabilize the power structure? If history is any indication, it swiftly turns out that freedom of expression is not such a sacrosanct right after all. In practice, we are permitted free speech only insofar as expressing our views changes nothing**. The premise that speech alone cannot be harmful implies that speech is precisely that which is ineffectual: therefore anything effectual is not included among one’s rights. **During World War I, the Espionage Act criminalized any attempt to “cause insubordination, disloyalty, mutiny, [or] refusal of duty” or to obstruct recruiting for the armed forces**. President Woodrow Wilson urged the bill’s passage because he believed antiwar activity could undermine the US war effort. Alexander Berkman and Emma Goldman were arrested under this law for printing anarchist literature that opposed the war. Likewise, the Anarchist Exclusion Act and the subsequent Immigration Act were used to deport or deny entry to any immigrant “who disbelieves in or who is opposed to all organized government.” Berkman, Goldman, and hundreds of other anarchists were deported under these acts. **There are countless other examples showing that when speech can threaten the foundation of state power, even the most democratic government doesn’t hesitate to suppress it. Thus, when the state presents itself as the defender of free speech, we can be sure that this is because our rulers believe that allowing criticism will strengthen their position more than suppressing it could. Liberal philosopher and ACLU member Thomas Emerson saw that freedom of speech “can act as a kind of ‘safety valve’ to let off steam when people might otherwise be bent on revolution.” Therein lies the true purpose of the right to free speech in the US.**

### Buckley

#### A right to free speech necessarily includes a removal of campaign donation limits.

**Buckley:** Buckley, James [Contributor, The Amendment Gazette] “[How Spending Money Became a Form of Speech](http://www.amendmentgazette.com/how-spending-money-became-a-form-of-speech/).” *The Amendment Gazette.* January 2014. RP

**The doctrine that money is a form of speech was not passed in any American legislature. Only seven people, [upheld by the] Supreme Court justices, voted to create that  inequitable equivalency**. That vote took place in 1976 in the ruling on [Buckley v. Valeo](http://www.fec.gov/law/litigation_CCA_Alpha.shtml#buckley). Senator Buckley (C – NY), presidential candidate Eugene McCarthy (D – MN) and others filed a suit against the Secretary of the Senate and ex officio member of the Federal Elections Commission , Francis Valeo. The decision of the Court changed the course of American federal elections and established one of the roots of the [Citizens United](http://www.amendmentgazette.com/2012/07/14/analysis-first-amendment-conquers-all/) decision. **The Court upheld a federal law which set limits on campaign contributions, but ruled that spending money to influence elections is a form of constitutionally protected free speech**, and struck down portions of the law. “A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached.  **This is because virtually every means of communicating ideas in today’s mass society requires the expenditure of money. The distribution of the humblest handbill or leaflet entails printing, paper, and circulation costs**. **Speeches and rallies generally necessitate hiring a hall and publicizing the event**. The electorate’s increasing dependence on television, radio, and other mass media for news and information has made these expensive modes of communication indispensable instruments of effective political speech.”

### Nelson

#### Sexual assault lawsuits are incredibly expensive.

**Nelson:** Nelson, Gayle [Contributor, Non Profit Quarterly] “The High Cost of Sexual Assaults on College Campuses.” June 2015. RP

It is estimated that [one in five women are sexually assaulted](http://www.washingtonpost.com/sf/local/2015/06/12/1-in-5-women-say-they-were-violated/) during their years as college students. The U.S. Department of Education reported that 2013 saw [over 5,000 forcible sexual offenses](http://www.gillibrand.senate.gov/campus-sexual-assault) on universities and colleges, and a recent study provides evidence that the actual number of assaults may be [six times higher](http://www.bjs.gov/content/pub/pdf/rsavcaf9513.pdf). **In addition to the horrors that sexually assaulted students face, these crimes are placing a financial cost on university and college systems as well.** **Colleges with high profile sexual assaults also have to deal with such consequences as fewer applications, lowered alumni donations, and loss of funds** provided by the Department of Education (DOE). For example, the University of Virginia saw its first decrease in 12 years in its number of applicants after [a discredited story ran](https://nonprofitquarterly.org/2015/04/07/scathing-report-released-on-rolling-stone-s-botched-uva-rape-article/) in Rolling Stone. And Dartmouth saw a fourteen percent drop in applications last year after students protested the school’s treatment of a campus sexual harassment and hazing. **Even more significant, universities facing scandals may lose funding from the DOE**. Therefore some leaders claim universities are overcorrecting by unjustly expelling those accused. Faculty at Harvard University and the University of Pennsylvania submitted letters to their administrators denouncing new sexual violence policies utilizing a preponderance of the evidence standard in sexual violence incidents. This standard, required by the DOE, is substantially lower than beyond a reasonable doubt, the standard used by courts in criminal legal actions. On June 8, 2015, student James Vivenzio [filed a complaint](https://nonprofitquarterly.org/2015/06/10/time-to-allow-ed-snowden-back-from-exile/) in Pennsylvania state court against his fraternity and his school, Penn State. In it, he alleged Kappa Delta Rho possessed a Facebook page containing photos of drunk and unconscious nude women, some of whom looked like they were being sexually assaulted. In addition, the complaint states those pledging the fraternity were given alcohol and drugs, allegedly to facilitate sexual assault and abuse. The suit is also filed against the university for failure to act when Vivenzio reached out to an administrator about the incidents over a year before. **Although Vivenzio isn’t requesting a specific dollar amount, other sexual assault cases against colleges and universities have led to settlements and verdicts from thousands to millions of dollars. For example, in July 2014, the University of Connecticut** [**paid one of the highest reported settlements for a sexual assault lawsuit**](https://www.insidehighered.com/news/2014/07/21/u-connecticut-pay-13-million-settle-sexual-assault-lawsuit)**, $1.3 million**, which included $900,000 to a female student who claimed she was cut from the hockey team after being raped by a male hockey player. **In the last five years, the number of sexual assaults at college campuses has skyrocketed. Currently, 118 schools are under federal investigation by the U.S. Department of Education (DOE) for alleged civil rights violations of Title IX related to the handling of sexual assault incidents**. At a time when resources have never been harder to raise, universities are diverting millions from education to fund settlements and defend lawsuits. This epidemic is leading schools of higher education to explore a number of difficult issues: how to define consent, how to punish those responsible, and how to measure the reliability of the accusers. At Penn State, a sexual assault and harassment task force [developed a 267-page report outlining eighteen recommendations](http://onwardstate.com/2015/01/29/sexual-assault-task-force-releases-findings-sweeping-recommendations/), including enhancing resources at the university’s smaller campuses and disseminating a campus climate sexual assault survey. At the same time, some government leaders believe schools are hiding or minimizing assaults in an attempt to avoid scandal. These beliefs are based on a recent study compiled by the U.S. Senate Subcommittee on Financial and Contracting Oversight finding 41 percent of colleges have not conducted any investigations of sexual violence in the past five years. Therefore, a bipartisan group of U.S. senators introduced the Campus Accountability & Safety Act in February. **If passed, the law would fine colleges and universities up to $150,000 for failure to submit detailed sexual violence reports**. In addition, universities that refuse to act in accordance with the legislation could be fined up to one percent of the school’s operating budget. **Recently, United Educators, the higher education insurance company, began offering insurance to cover sexual assault payouts and this appears to have become a disturbingly necessary cost of “doing business.” Between 2006–10, the company has paid out $36 million on behalf of its 1,200 member universities. Seventy-two percent of the settlements were provided to parties suing the schools due to sexual assault incidents.**

### FIRE

#### Empirics confirm that colleges who allow free speech violate Title IX and lose funds.

**FIRE:** Foundation for Individual Rights in Education [Organization that fights for free speech] “Department of Justice: Title IX Requires Violating First Amendment.” *FIRE.* April 2016. RP

WASHINGTON, April 25, 2016—**The Department of Justice now interprets Title IX to require colleges and universities to violate the First Amendment**. In an April 22 findings letter concluding its investigation into the University of New Mexico’s policies and practices regarding sex discrimination, the Department of Justice (DOJ) found the university improperly defined sexual harassment. DOJ flatly declared that “[u]nwelcome conduct of a sexual nature”—including “verbal conduct”—is sexual harassment “regardless of whether it causes a hostile environment or is quid pro quo.” **To comply with Title IX, DOJ states that a college or university “carries the responsibility to investigate” all speech of a sexual nature that someone subjectively finds unwelcome, even if that speech is protected by the First Amendment or an institution’s promises of free speech. “The Department of Justice has put universities in an impossible position: violate the Constitution or risk losing federal funding**,” said Foundation for Individual Rights in Education (FIRE) President & CEO Greg Lukianoff. “The federal government’s push for a national speech code is at odds with decades of legal precedent. University presidents must find the courage to stand up to this federal overreach.” The shockingly broad conception of sexual harassment mandated by DOJ all but guarantees that colleges and universities nationwide will subject students and faculty to months-long investigations—or worse—for protected speech. **In recent years, unjust “sexual harassment” investigations into protected student and faculty speech have generated national headlines and widespread concern. Examples include: Northwestern University Professor Laura Kipnis was investigated for months for writing a newspaper article questioning “sexual paranoia” on campus and how Title IX investigations are conducted. Syracuse University law student Len Audaer was investigated for harassment for comedic articles he posted on a satirical law school blog patterned after The Onion. A female student at the University of Oregon was investigated and charged with harassment and four other charges for jokingly yelling “I hit it first” out a window at a couple. The Sun Star, a student newspaper at the University of Alaska Fairbanks, was investigated for nearly a year for an April Fools’** Day issue of the newspaper and for reporting on hateful messages posted to an anonymous “UAF Confessions” Facebook page. And just two weeks ago, a police officer at the University of Delaware ordered students to censor a “free speech ball”—put up as part of a demonstration in favor of free speech—because it had the word “penis” and an accompanying drawing on it, claiming that it could violate the university’s sexual misconduct policy. **DOJ’s rationale would not just legitimize all of the above investigations—it would require campuses to either conduct such investigations routinely or face potential federal sanctions.** This latest findings letter doubles down on the unconstitutional and controversial “blueprint” definition of sexual harassment jointly issued by DOJ and the Department of Education’s Office for Civil Rights in a May 2013 findings letter to the University of Montana. FIRE and other civil liberties advocates at the time warned that the controversial language threatens the free speech and academic freedom rights of students and faculty members. “Requiring colleges to investigate and record ‘unwelcome’ speech about sex or gender in an effort to end sexual harassment or assault on campus is no more constitutional than would be a government effort to investigate and record all ‘unpatriotic’ speech in order to root out treason,” said Robert Shibley, FIRE’s executive director. “Students, faculty, and administrators must not give in to this kind of campus totalitarianism—and FIRE is here to fight alongside them.” In January, FIRE sponsored a lawsuit filed against Louisiana State University (LSU) that challenges the unconstitutional definition of sexual harassment being promulgated by the Departments of Education and Justice in this and in previous letters. **Teresa Buchanan, a tenured associate professor of early childhood education in LSU’s acclaimed teacher certification program, was fired for “sexual harassment” under an LSU policy that tracks the federal government’s broad definition.** Buchanan’s lawsuit challenges the policy’s constitutionality and its application to her.

### Leef

#### Colleges and the government use Title IX against free speech

**Leef:** Leef, George [Contributor, Forbes] “Free Speech Can't Be Trumped By Title IX -- But College Officials Use It That Way.” *Forbes.* September 2015. RP

**In short, in trying to avoid liability for “sexual harassment” under Title IX, many schools have gone way too far. They have allowed hyper-sensitive or vindictive students to use Title IX regulations as a weapon against anyone whose speech offends or annoys them**. Even though the Education Department officially has advised colleges (in a 2003 guidance letter) that Title IX may not be used to regulate the content of speech, its current approach works the opposite way. The reason is that the Department’s Office for Civil Rights control over federal money flowing to schools gives it great power to “influence” school officials. Again, Bader explains: “**Using this massive leverage, OCR is now forcing some colleges to pay large amounts of compensation to students who allege harassment or sexual assault, even though it lacks statutory authority to award such compensatory damages.”** The court in Yeasin can do its part by ruling that his speech was protected under the First Amendment and that the university cannot hide behind the “Title IX made us do it” defense. Congress, however, has the bigger part to play. It should head off future cases like Yeasin by clarifying what should already be (but unfortunately isn’t) clear: the First Amendment rights of students are not overridden by anything in Title IX. A good step in the direction would be for it to codify the Supreme Court’s definition of harassment in Davis v. Monroe County Board of Education. Under Davis, speech cannot be a Title IX violation unless it is unwelcome, aimed at individuals based on their sex, and sufficiently “severe, pervasive, and objectively offensive” that it interferes with the student’s ability to get an education. **Unfortunately, as Bader observes, OCR has “thumbed its nose” at Davis by weakening the definition so that a lot of speech that is protected under the First Amendment seems to constitute “sexual harassment**.” It’s easy to understand why. Bureaucrats love complicated regulations that generate large numbers of cases to keep themselves busy. Many also just like throwing their weight around. On college campuses, the rule ought to be that speech is protected even if it is no more than angry tweeting, but the Department of Education has turned free speech into a minefield. It’s up to the courts and Congress to sweep that minefield.

### Richardson

#### Free speech on campus violates Title IX and will sack funding – government officials have said so.

**Richardson:** Richardson, Bradford [Contributor, Washignton Times] “Title IX order on campus ‘harassment’ violates rights, free speech advocates say.” *Washington Times.* May 2016. RP

**Several free speech advocacy groups are concerned about a Justice Department order that they say forces colleges and universities to violate the First Amendment. Justice sent a letter to the University of New Mexico in late April concluding an investigation into the school’s sex discrimination policies and practices. In the letter, the agency said the university’s policies failed to account for “unwelcome conduct of a sexual nature,” including “verbal conduct,” in violation of Title IX**. According to the letter, federal law defines sexual harassment as “unwelcome conduct of a sexual nature includ[ing] unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence.” The Justice Department required universities to investigate any “unwanted sexual conduct” to determine “whether the harassment was sufficiently serious as to cause limitations or denial of educational benefits.” **Foundation for Individual Rights in Education President and CEO Greg Lukianoff said the Justice Department letter has put colleges and universities in an “impossible position,” forcing them to choose between violating “the Constitution or risk losing federal funding.**” “The federal government’s push for a national speech code is at odds with decades of legal precedent,” Mr. Lukianoff said in a FIRE report on the letter. “University presidents must find the courage to stand up to this federal overreach.” Robert Shibley, FIRE executive director, said the rule will usher in “campus totalitarianism.” He compared it to government prohibitions on political dissent. “Requiring colleges to investigate and record ‘unwelcome’ speech about sex or gender in an effort to end sexual harassment or assault on campus is no more constitutional than would be a government effort to investigate and record all ‘unpatriotic’ speech in order to root out treason,” Mr. Shibley said in the report. Writing at Liberty Unyielding, Hans Bader, senior attorney for the Competitive Enterprise Institute and a former Education Department attorney, said that under the Justice Department rule, simply asking a student out on a date could turn into “harassment” because the speech has to be only “unwelcome.” Even if students are not expelled under the policy, Mr. Bader said, some university Title IX policies significantly curtail the freedom of movement on campus for those who are accused of harassment before they declare responsibility. **Indeed, “the Education Department’s Office of Civil Rights has found colleges in violation of Title IX for not routinely providing interim measures**,” Mr. Bader notes. Attempts to reach the Justice Department for comment this weekend were unsuccessful. **This is not the first time Title IX, which is more commonly associated with equity between the sexes in high school and collegiate athletics, has been used to expand the definition of “sexual harassment” to include various forms of speech on college campuses**. Laura Kipnis, a professor at Northwestern University, was investigated for months after students filed a Title IX complaint in response to an essay she wrote questioning several aspects of the purported campus rape epidemic. Instances of universities chilling campus speech for fear of violating prohibitions on “sexual harassment” are ubiquitous. A student at the University of Delaware last month was told to censor a “free speech ball” — a large, plastic ball on which students wrote various thoughts or drew pictures — because it featured a drawing of a penis and the word “penis.” Campus authorities told students that the ball may be in violation of the university’s policy against sexual misconduct.

### Oparah

#### Abolitionism is good!

In my earlier work on the academic-prison-industrial complex, I suggested that activist scholars were producing and disseminating countercarceral knowledge by bringing academic research into alignment with the needs of social movements and interrogating and reorganizing relationships between prisoners and researchers in the free world.50 Given the history of epistemic and physical violence and exploitation of research subjects by the academy, such a reorganizing of relationships and accountabilities is clearly urgently needed. Yet no matter how radical and participatory our scholarship is, we ultimately fail to dismantle the academic-military-prison-industrial com- plex (academic-MPIC) if we address it only through the production of more knowledge. Since knowledge is a commodity, marketed through books, arti- cles, and conferences as well as patents and government contracts, the pro- duction of “better,” more progressive or countercarceral knowledge can also be co-opted and put to work by the academic-MPIC.

An abolitionist lens provides a helpful framework here. Antiprison schol- ars and activists have embraced the concept of abolition in order to draw attention to the un nished liberation legislated by the irteenth Amend- ment, which abolished slavery “except as a punishment for a crime.”51 Aboli- tionists do not seek primarily to reform prisons or to improve conditions for prisoners; instead they argue that only by abolishing imprisonment will we free up the resources and imagine the possibility of more e ective and less violent strategies to deal with the social problems signaled by harmful acts. While early abolitionists referred to themselves as prison abolitionists, more recently there has been a shi to prison-industrial complex abolitionism to expand the analysis of the movement to incorporate other carceral spaces— from immigrant detention centers to psychiatric hospitals—and to empha- size the role of other actors, including the police and courts, politicians, corporations, the media, and the military, in sustaining mass incarceration.52

How does an abolitionist lens assist us in assessing responses to the academic-MPIC? First, it draws our attention to the economic basis of the academic-MPIC and pushes us to attack the materiality of the militari- zation and prisonization of academia rather than limiting our interventions to the realm of ideas. is means that we must challenge the corporatization

of our universities and colleges and question what in uences and account- abilities are being introduced by our increasing collaboration with neoliberal global capital. It also means that we must dismantle those complicities and liberate the academy from its role as handmaiden to neoliberal globaliza- tion, militarism, and empire. In practice, this means interrogating our uni- versities’ and colleges’ investment decisions, demanding they divest from the military, security, and prison industries; distance themselves from military occupations in Southwest Asia and the Middle East; and invest instead in community-led sustainable economic development. It means facing allega- tions of disloyalty to our employers or alma maters as we blow the whistle on unethical investments and the creeping encroachment of corporate fund- ing, practices, and priorities. It means standing up for a vision of the liberal arts that neither slavishly serves the interests of the new global order nor returns to its elitist origins but instead is deeply embedded in progressive movements and richly informed by collaborations with insurgent and activ- ist spaces. And it means facing the challenges that arise when our divest- ment from empire has real impact on the bottom line of our university and college budgets.

### Lukianoff

#### Colleges will roll back progress on free speech and will NOT self-regulate.

**Lukianoff:** Lukianoff, Greg [Contributor, FIRE] “Campus Speech Codes: Absurd, Tenacious, and Everywhere.” *National Association of Scholars.* May 2008. RP

What Makes Speech Codes So Hardy? **So how do speech codes continue to survive? I have come to the conclusion that there are at least four major factors at work: 1. Ideology: Political correctness is still alive and powerful on our college campuses. The belief that some students (and, indeed, some administrators) have a right not to be offended plays a part in dozens upon dozens of incidents every year in which FIRE must come to the defense of a student or faculty member who said “the wrong thing.**” “The wrong thing” can range from publishing an “insensitive cartoon,” to sending out an overly ironic Halloween invitation, to an attempt to satirize or protest any number of issues, from affirmative action to terrorism and religious extremism. 2**. Bureaucracy: What I find perhaps most galling about universities’ unwillingness to defend free speech and provide basic due process rights for students is that students are being asked to pay increasing portions of their lifetime earnings for the privilege of attending these institutions.** Furthermore, their tuition money is far too infrequently spent on improving faculty-to-student ratios or otherwise guaranteeing the quality of education. Rather, it goes toward an ever expanding army of student judicial officers, residential life officials, and other administrators whose primary existence seems to revolve around keeping an eye on students and being involved in their lives**.** The results have not been surprising, as administrators justify their positions and salaries **by diagnosing more and more problems in the behavior, speech, and even attitudes and beliefs of students. 3.** **Liability: This is the factor that I believe gets the least attention from the critics of campus political correctness. An ever-growing industry of university lawyers and “risk management” experts has left universities in a panic about avoiding lawsuits.** Unfortunately, some poorly decided harassment cases, as well as case law indicating an increased legal duty on the part of campus administrators to police the behavior of students, seems to have encouraged many plaintiffs. At the same time, the risk management industry has a vested interest in exaggerating how serious and complex the state of the law actually is, and in this process free speech and due process often lose**. 4. Genuine ignorance of the law, the principles of modal liberty, and the reality of speech codes**: Starting in 2000, FIRE has made a point of sending a representative to the annual Association of Student Judicial Affairs conference, and we have led seminars there concerning abuses of student speech rights on campus. While there are notable exceptions, **I have been routinely surprised by how much misinformation and lack of understanding there is among both college administrators and university counsels regarding basic principles of free speech and academic freedom**. FIRE has a number of strategies for addressing the problems presented by these four factors, which I will address in greater detail below.

#### Legal change is key to solve

**Lukianoff:** Lukianoff, Greg [Contributor, FIRE] “Campus Speech Codes: Absurd, Tenacious, and Everywhere.” *National Association of Scholars.* May 2008. RP

**Speech codes have proven to be surprisingly resilient, so what strategies can be used to eradicate them once and for all? For starters, the Speech Codes Litigation Project is essential to this end and has, so far, proven to be uniformly successful. Likewise, David French, director of the Alliance Defense Fund's Center for Academic Freedom, has committed his organization to litigating against speech codes, and so far his attempts have been equally successful. At every school where a “red light” speech code has faced a sustained challenge,40 that code has fallen-- whether by the university’s unilateral decision, negotiation with the school, or legal decision. However, more litigation is sorely needed.** In FIRE’s experience—given that overbroad speech codes are plentiful and many lawyers are interested in doing pro bono work on important matters of constitutional law— finding students who are willing to sue their own schools is the great limiting factor for the Speech Codes Litigation Project. FIRE hopes that more brave students are willing to come forward to challenge their schools’ repressive codes, and we will be working to identify these students both through our Campus Freedom Network and through cooperation with other non-profits.

#### Congress should require universities to be compliant with previous Supreme Court rulings that mandate free speech on campus, with provisions for punishment if not complied with.

**Lukianoff:** Lukianoff, Greg [Contributor, FIRE] “Campus Speech Codes: Absurd, Tenacious, and Everywhere.” *National Association of Scholars.* May 2008. RP

**Looking forward, however, legislation might be appropriate in certain areas. Legislators could very well require universities to follow controlling case law, to define harassment in a way that follows the appropriately narrow formulation of the only student-on-student harassment case to reach the Supreme Court, Davis v. Monroe County Board of Education**,46 and to provide further redress for students and faculty members whose free speech rights have been violated. **Congress could also give teeth to contractual requirements so that private universities face more serious consequences should they fail to live up to their promises regarding free speech. Thus, well-constructed legislation could help end the scandal of campus speech codes forever**. FIRE will be exploring how to best achieve these results in the coming years.

### Hardiman

#### Colleges circumvent the Aff and just rebrand speech codes as “anti-harassment policies”

**Hardiman:** Hardiman, Kate [Professor, University of Notre Dam] “‘Welcome to college – now be quiet!’ Many campuses maintain militant speech codes.” *The College Fix.* August 2015. RP

**A majority of universities across the nation continue to infringe upon their students’ First Amendment right to free speech**, according to a 2015 survey of campus policies published by the Foundation for Individual Rights in Education. Once bastions of free expression and open debate, modern American universities prohibit speech in a variety of ways to protect students from ideas some deem “offensive,” “harmful” or “upsetting.” According to the foundation’s report, “Spotlight on Speech Codes 2015: The State of Free Speech on Our Nation’s Campuses,” **nearly 55 percent of the 437 universities analyzed have “policies that clearly and substantially prohibit protected speech,” earning the group’s “Red Light” designation**. FIRE conducts a yearly free speech review of the nation’s universities to assess their adherence to the First Amendment, and this year’s stats showed nominal improvement over previous ones. “Last year, that figure stood at 58.6 percent; **this is the seventh year in a row that the percentage of schools maintaining such policies has declined,” the group noted. But don’t pop the champagne cork just yet.** The foundation’s president, Greg Lukianoff, co-penned a cover story for The Atlantic this month which warns the tide has turned so far that now some students want protection from other students’ and professors’ “scary ideas.” “**A movement is arising, undirected and driven largely by students, to scrub campuses clean of words, ideas, and subjects that might cause discomfort or give offense,” he wrote**. “This new climate is slowly being institutionalized, and is affecting what can be said in the classroom, even as a basis for discussion.” **While the percentage of higher education institutions with restrictive speech codes appears to have declined over the past six years, FIRE reports that many speech codes may simply have been rebranded as “anti-harassment policies” following pressure from the Department of Education’s Office for Civil Rights. Universities even hold faculty training sessions to familiarize them with new anti-harassment policies**, such as the University of California’s microaggression training seminars for faculty leaders. In these sessions, professors were taught that saying “America is the land of opportunity” is an offensive “microaggression.”

#### 

### Schimmel

#### Decades upon decades of court rulings confirm that first amendment in the context of colleges is the domain of the courts ad uniquely important to regain the court’s powers.

**Schimmel:** Schimmel, David “The First Amendment and the Rehnquist Court: Protecting Majority Values or Limiting Individual Liberty?” *Social Education.* No date. RP

**During recent decades, many citizens have complained that the courts have usurped the legitimate authority of state and local governments. They have been particularly critical of federal judges for intervening in local affairs and for using the Bill of Rights as a weapon and justification for imposing their personal values on local institutions (such as the public schools) without any democratic check by the citizens. Such critics have welcomed recent Supreme Court decisions that have weakened First Amendment protections and have given greater power to local majorities**. But those who prize the federal courts' role in protecting the rights of the minority to express unpopular opinions or practice unpopular religions have been dismayed. Thus, the bicentennial of the Bill of Rights finds the First Amendment at a constitutional crossroad. This article examines a series of recent Supreme Court opinions that illustrate how the justices arrived at that crossroad and how they are reinterpreting the First Amendment. The first section looks at two controversial decisions that stopped the expansion of student freedom of expression and then discusses the implications of those decisions for public schools. The second section examines the Court's tendency toward a radical reinterpretation of the Establishment and Free Exercise Clauses-the possible destruction of the wall of separation between church and state, and the toleration of new limits on freedom of religion. Student Freedom of Expression The Supreme Court's change of direction can best be understood in the context of its landmark decision Tinker v. Des Moines Independent School District, 393 U.S. 503 (1969), which proclaimed that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." **In Tinker, the Court upheld the students' right to wear black armbands to protest the Vietnam War** even though they knew that school policy prohibited such behavior. The Court ruled that "apprehension of disturbance" was not enough to restrict student expression that could be punished only if it would "materially and substantially" interfere with schoolwork or with the rights of others. In a strong dissenting opinion, Justice Black wrote that Tinker would result in the subjection of "all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest, students." **Despite these concerns, Tinker firmly established the First Amendment in the public schools** and required judges to look critically at administrative restrictions on student expression. In 1986, however, the Supreme Court began to narrow its interpretation of Tinker. This first occurred in the case of a high school senior, Matthew Fraser, who was suspended for giving a controversial six-sentence nominating speech at a school assembly. According to the Court, Fraser described his candidate in terms of "an elaborate, graphic, and explicit sexual metaphor" (Bethel School District No. 403 v. Fraser, 478 U.S. 675 [1986]).1 Fraser claimed that his speech caused no substantial disruption and therefore was protected by the Court's ruling in Tinker. A majority of the justices disagreed. The Court distinguished the "sexual content" of Fraser's speech from the "political message" of the students who wore black armbands to protest the Vietnam War in Tinker. Chief Justice Burger reasoned that since one purpose of the public schools is to teach "manners of civility," educators can "prohibit the use of vulgar and offensive terms." Furthermore, wrote Burger, it is the job of school authorities to determine "what manner of speech in the classroom or school assembly is inappropriate." According to the Chief Justice, since it is unnecessary in discussions of ideas or the search for truth, indecent and offensive speech occupies a low position in the "hierarchy of First Amendment values" and is "clearly outweighed by the social interest in order and morality." Justice Burger further signaled the Court's change of direction by quoting, with approval, Justice Black's dissenting opinion in Tinker that the Constitution does not compel teachers, parents, or school officials "to surrender control of the American public school system to public school students." Justice Burger's opinion permitted two conflicting interpretations. Those concerned with protecting student freedom of expression argued that Fraser merely carved out a narrow exception to Tinker. **They emphasized that Burger's decision reaffirmed that First Amendment rights apply to public schools**, that fundamental democratic values must include the teaching of tolerance for divergent political and religious opinions, and that there exists an "undoubted freedom to advocate unpopular and controversial views in schools and classrooms." Those concerned with expanding community control highlighted Justice Burger's comments that school officials have the power and responsibility to prohibit offensive language, and that teachers, parents, and administrators have broad discretion to determine what is offensive in their local school. Any ambiguity or confusion caused by Fraser was clarified two years later in Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988). 2 This case arose when a high school principal censored two stories in a newspaper published by students as part of their journalism course. One of the stories concerned three students' experiences with pregnancy; the other was about the effects of divorce on students. The editors claimed the principal violated their freedom of the press. The Court disagreed. On behalf of the Court's majority, Justice White wrote that the Tinker principles still applied in cases concerning "a student's personal expression" that happens to occur in school. According to the Court, however, the official school newspaper was different; it was a "supervised learning experience for journalism students" and part of the curriculum. Therefore, the Court ruled that school officials were entitled to regulate its content "in any reasonable manner." Justice White explained that in school-sponsored publications educators may regulate not only disruptive expression but also may set "high standards" and prohibit articles that are "ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences." Similarly, schools may refuse to sponsor student expression that may "advocate drug or alcohol use, irresponsible sex," or associate the school with a controversial political opinion. Accordingly, the Court held that educators do not violate the First Amendment by "exercising editorial control over the style and content of student speech" in school-sponsored publications or theatrical productions "so long as their actions are reasonably related to legitimate pedagogical concerns." In a dissenting opinion, Justice Brennan, joined by Justices Blackmun and Marshall, criticized the majority's approval of "brutal censorship" and implied that Hazelwood might lead to a reversal of Tinker and to a public school system in which educators act as "thought police," stifling discussion of "all but state-approved topics and advocacy of all but the official position." According to Justice Brennan, instead of teaching students to respect our democratic liberties and to understand that "our Constitution is a living reality," the majority's decision teaches them "to discount important principles of our government as mere platitudes." As a result of Tinker, Fraser, and Hazelwood, two different tests are now available to judge the scope of school control over student expression. First, students' personal views are still governed by Tinker, and schools may not restrict them unless they cause substantial disruption, interfere with the rights of others, or are indecent and offensive. Second, Hazelwood applies to school-sponsored expression that educators may censor for "valid educational purposes." Thus, the Court seems to have approved a "reasonableness" test under which administrative control of school-sponsored publications and plays will be presumed valid unless students can meet the difficult burden of showing that a school restriction is "unreasonable" or has "no valid educational purpose." The implications of Hazelwood are twofold. First, it confirms a trend that began with Fraser, suggesting that in close freedom of expression cases brought by students who challenge school authority, a majority of the Court is likely to support the school administration rather than students. Second, it forces educators to distinguish between what they have authority to do legally and what it is wise to do educationally. The fact that schools may now censor school-sponsored publications does not mean that they should. Hazelwood requires educators and school boards, not judges, to answer the educational question: What is the best way for school-sponsored newspapers to prepare citizens to exercise their freedom of expression in a fair and responsible manner? Is it by prohibiting students from publishing "articles about sensitive topics"? Or is it by teaching students to demonstrate high standards of responsible journalism when they write about controversial issues? Freedom of Religion The two religion clauses of the First Amendment are used in different ways. The Establishment Clause ("Congress shall make no law respecting an establishment of religion...") usually poses the question of when courts should strike down laws or government policies that are alleged to promote religion. The Free Exercise Clause ("...or prohibiting the free exercise thereof") has been used by religious minorities who feel they are entitled to a judicial exemption from laws that interfere with their freedom of religion. The Supreme Court is in the process of changing its interpretation of both religion clauses. The Free Exercise Clause Until 1990, the Court used a balancing test to determine whether religious believers should be exempt from laws that interfered with their religion. If they could show that the law substantially burdened a central aspect of their faith, they would be exempt unless the state proved that the law served a "compelling government interest." Thus, the Supreme Court exempted the Amish from Wisconsin's compulsory education law after the 8th grade when it was shown that enforcement of the law "would gravely endanger, if not destroy, the free exercise of their religion" and that the state was unable to prove a compelling need for additional education (Wisconsin v. Yoder, 406 U.S. 205 [1972]). This traditional approach to free exercise claims, however, was substantially changed in Employment Division, Department of Human Resources of Oregon v. Smith, 110 S. Ct. 1595 (1990), a Supreme Court decision on the right of members of the Native American Church to use peyote in their religious ceremonies. On behalf of a 5-4 majority, Justice Scalia's opinion sharply restricted the protection of the Free Exercise Clause. In Smith, the majority rejected the balancing test and held that "laws that have the effect of burdening a particular religious practice need not be justified by a compelling government interest." According to Justice Scalia, adopting the compelling interest test "would be courting anarchy," a danger that increases "in direct proportion to the society's diversity of religious beliefs." Scalia's approach would result in allowing, but not requiring, individual states to exempt specific religious practices such as the use of peyote. Justice Scalia acknowledged that leaving these decisions to the political process might put religious minorities at a disadvantage. But, he concluded, "that unavoidable consequence of democratic government must be preferred to a system in which each conscience is a law unto itself or in which judges weigh the social importance of all laws against the centrality of all religious beliefs." In a concurring opinion sharply critical of Justice Scalia's reasoning, Justice O'Connor wrote that the majority decision "dramatically departs from well-settled First Amendment jurisprudence, appears unnecessary to resolve the question presented, and is incompatible with our Nation's fundamental commitment to individual religious liberty." Justice O'Connor, together with Justices Brennan, Blackmun, and Marshall, argued that the compelling interest test has worked effectively in protecting both religious liberty and important public interests. She rejected Justice Scalia's suggestion that putting religious minorities at a disadvantage was an "unavoidable consequence" of the democratic process. On the contrary, she wrote, "the First Amendment was enacted precisely to protect the rights of those whose religious practices are not shared by the majority....The history of our free exercise doctrine amply demonstrates the harsh impact majoritarian rule has had on unpopular or emerging religious groups such as the Jehovah's Witnesses and the Amish." The Establishment Clause In 1947, the Court summarized its general view of the Establishment Clause in one sentence: "In the words of Jefferson, the clause against establishment of religion by law was intended to erect a 'wall of separation between church and state'" (Everson v. Board of Education, 330 U.S. 1 [1947]). When individuals challenged a government action or policy as a violation of the Establishment Clause, the Court, for almost twenty years, has applied a three-part test. This test, authored by then Chief Justice Burger in Lemon v. Kurtzman, 403 U.S. 602 (1971), holds that a state law or school policy should be held unconstitutional if (1) it has no secular purpose, (2) it is not neutral, i.e., its primary effect promotes or undermines religion, or (3) it fosters excessive government entanglement with religion. Under the tripartite Lemon test, the Court struck down laws requiring public schools to promote reverence for the Ten Commandments, to restrict the teaching of evolution, and to encourage students to pray. For a number of years, Justice Rehnquist has been critical of the Lemon test and the notion that the Establishment Clause requires a wall of separation between church and state. This criticism culminated in a strongly worded dissenting opinion in Wallace v. Jaffree, 472 U.S. 38 (1985), that attacked both the tripartite test and the wall of separation. According to Justice Rehnquist, the Lemon test "is difficult to apply," "yields unprincipled results," and "has produced only consistent unpredictability." The usual judicial response to the difficulties in applying a constitutional standard such as the tripartite test would be to modify or reformulate it. But Justice Rehnquist rejects these alternatives. Instead, he chooses a radical approach-a complete rejection of the underlying principles that support the Lemon test. Thus, he proposes overturning more than forty years of precedent and the well-established belief that the separation of church and state is a basic constitutional value. 3 Justice Rehnquist argues that in the nineteenth century the Establishment Clause merely "forbade establishment of a national religion" and "preference among religious sects"; it "did not require government neutrality between religion and irreligion, nor did it prohibit the Federal Government from providing nondiscriminatory aid to religion." Thus, writes Rehnquist, "there is simply no historical foundation for the proposition that the Framers intended to build a walquot; between church and state. The wall of separation, concludes Rehnquist, "is a metaphor based on bad history, a metaphor which has proved useless as a guide to judging." It should, he urges, "be frankly and explicitly abandoned." When Justice Rehnquist wrote his dissenting opinion in Jaffree, it received little publicity. In 1985, it was still possible to dismiss his views as a lone strident voice of an associate justice at the far right edge of the Court. But that was before the appointments of conservative Justices Kennedy and Scalia, before Rehnquist was appointed Chief Justice, and before the resignations of the Court's senior liberal justices, Thurgood Marshall and William Brennan. Today, the Supreme Court is shifting further to the right, and at least three associate justices now support the Chief Justice's criticism of past Establishment Clause decisions. This change is clearly reflected in a 1989 dissenting opinion in County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter, 492 U.S. 573 (1989), by Justice Kennedy, joined by Justices Scalia, White, and Rehnquist. According to Kennedy, if the federal courts act as "jealous guardians" of an absolute wall of separation, this would not reflect neutrality but would send "a clear message of disapprovaquot; of religion. In Kennedy's view, the Establishment Clause imposes only two limiting principles: (1) "government may not coerce anyone to support or participate in any religion"; and (2) "it may not establish a state religion." According to the four dissenters, however, "government policies of accommodation, acknowledgment, and support for religion are an accepted part of our political and cultural heritage." Current Interpretations What is the current interpretation of the Establishment Clause? A slim majority of the Court seems to have adopted Justice O'Connor's reformulation of the traditional tripartite test into a two-part inquiry of "whether government's purpose is to endorse religion and whether the statute actually conveys a message of endorsement" (Wallace v. Jaffree 1985). Thus, although five justices have prohibited government policies that endorse religion, a growing, younger group of justices is poised to change fundamentally the meaning of the Establishment Clause in the United States and allow government action clearly intended to encourage religion. 4 If the Court adopts either the Rehnquist or the Kennedy interpretation of the Establishment Clause, public schools would not necessarily start each day with prayers and states would not necessarily fund religious schools. Rather, the type of government activities courts have found in violation of the Establishment Clause during the past forty years would no longer violate the First Amendment. This, however, would not resolve the debate about church versus state issues. In fact, it might intensify and widen the debate-shifting it from the Supreme Court to every state legislature and school district in the nation. This approach would allow states and local communities to decide whether to endorse or encourage religion or whether to create a wall of separation between church and state in their jurisdiction. Trends and Consequences **During recent decades, citizens have turned to the federal courts for protection when they believed their First Amendment rights were violated. Most constitutional controversies that reach the Supreme Court, however, are not cases of right against wrong but of legitimate values in conflict. Thus, it is the Court's job to interpret and apply the Constitution and to decide when to protect and when to limit individual rights-often by balancing the values of the democratic majority against the rights of controversial minorities or unpopular individuals.** Because these judgments change over time, the scope of First Amendment rights also changes. Just as the Supreme Court's decision in Tinker dramatically expanded freedom of expression for students during the 1970s, so the Fraser and Hazelwood cases have narrowed that freedom during the 1980s. Similarly, the Court has expanded and contracted the scope of religious freedom. For decades, all of the justices agreed that the Establishment Clause meant that a wall of separation should stand between church and state and that government should be neutral in matters of religion. But, in recent years, an increasing minority of the Court has challenged both of these beliefs, and the challengers are just one vote short of a revolutionary change in Establishment Clause jurisprudence. Moreover, a slim majority has recently reinterpreted the Free Exercise Clause. According to Oregon v. Smith, citizens are no longer entitled to an exemption from laws that substantially interfere with their religious practices even though enforcement of those laws does not serve a compelling public interest. 5 From the perspective of people concerned with the widest possible protection for freedom of religion and expression, this trend of Supreme Court decisions is a disaster. From the perspective of those who feel that the Court has gone too far in interfering with the rights of the majority, on the other hand, these changes are a long-awaited triumph. Whether we view these decisions as an appropriate return to the principles of federalism or an abdication of the responsibility of the Supreme Court to protect minority rights, citizens must study, examine, and attempt to understand them; in the years following the bicentennial of the Bill of Rights, the Court will be less likely to resolve these matters for us because an increasing number of Supreme Court justices want elected representatives, not appointed judges, to decide traditional First Amendment conflicts. Thus, the question and challenge for the coming decades is how well our schools are preparing future voters to confront these complex and critical issues. To enable students to understand the hard constitutional questions their communities may have to confront, teachers can help them examine issues such as these: Should schools prohibit students from publishing unpopular and controversial views in campus newspapers? Should taxes help pay for parochial schools? Should communities be allowed to encourage voluntary, school-sponsored prayer? Should the government protect the public expression of religious or political views that offend most citizens? What are the reasons today to maintain or demolish the wall of separation between church and state? The bicentennial is an apt time to consider these questions, and to seek ways to improve the teaching and practice of our fragile First Amendment freedoms.

### Broderick

#### Speech codes have been the responsibility of the courts – the plan goes against that.

**Broderick:** Broderick, Matthew “SUPREME COURT AVOIDS CRUSHING THE FIRST AMENDMENT: WHY THE DECISION IN *UNITED STATES V. STEVENS* WAS IMPORTANT FOR THE PRESERVATION OF FIRST AMENDMENT RIGHTS.” *Denver University Law Review.* 2011. RP

**Statutes that regulate the content of speech are presumptively inva- lid and** the government bears the burden of rebutting this presumption. The government may refute this presumption by demonstrating that the content-based restrictive statute can survive a strict scrutiny test or that the content under restriction belongs to a category of speech that does not warrant First Amendment protection. **The strict scrutiny test requires the government to establish that: (1) a statute prohibiting speech content seeks to achieve a compelling state interest; (2) the statute is nar- rowly tailored to achieve that interest; and (3) the means chosen to achieve that interest are the least restrictive means available. Since the test’s inception the Supreme Court has invalidated every statute sub- jected to strict scrutiny based on the content-based speech restrictions, proving strict scrutiny to be a nearly impassible test.**

#### First Amendment protections are super strong now

**Broderick:** Broderick, Matthew “SUPREME COURT AVOIDS CRUSHING THE FIRST AMENDMENT: WHY THE DECISION IN *UNITED STATES V. STEVENS* WAS IMPORTANT FOR THE PRESERVATION OF FIRST AMENDMENT RIGHTS.” *Denver University Law Review.* 2011. RP

**Today, the First Amendment prohibits the government from restrict- ing the content, message, or idea expressed within speech. Expression need not be of any serious value to enjoy the shield of the First Amend- ment**, and regulations as to the time, manner, and location of speech must survive a “narrowly tailored” test to be deemed constitutional. **The First Amendment provides the strongest protections against content- based restrictions on speech, making such regulations presumptively invalid.**

### Watanabe

-cut a circumvention arg about colleges avoiding enforcmenet

#### Courts can eliminate codes themselves – lawsuits are piling up now

**Watanabe:** Watanabe, Teresa [Contributor, the LA Times] “Students challenge free-speech rules on college campus.” *LA Times.* July 2014. RP

**College students in California and three other states filed lawsuits against their campuses Tuesday in what is thought to be the first-ever coordinated legal attack on free speech restrictions in higher education. Vincenzo Sinapi-Riddle, a 20-year-old studying computer science, alleged that Citrus College in Glendora had violated his 1st Amendment rights by restricting his petitioning activities to a small "free-speech zone" in the campus quad**. According to Sinapi-Riddle's complaint, a campus official stopped him last fall from talking to another student about his campaign against spying by the National Security Agency, saying he had strayed outside the free-speech zone. The official said he had the authority to eject Sinapi-Riddle from campus if he did not comply. "It was shocking to me that there could be so much hostility about me talking to another student peacefully about government spying," Sinapi-Riddle said in an interview. "My vision of college was to express what I think." **In his lawsuit, Sinapi-Riddle is challenging Citrus' free-speech zone, an anti-harassment policy that he argues is overly broad and vague and a multi-step process for approving student group events**. The college had eliminated its free-speech zones in a 2003 legal settlement with another student, but last year "readopted in essence the unconstitutional policy it abandoned," the complaint alleged. College officials were not immediately available for comment. But communications director Paula Green forwarded copies of Citrus' free-speech policy, which declares that the campus is a "non-public forum" except where otherwise designated to "prevent the substantial disruption of the orderly operation of the college." The policy instructs the college to enact procedures that "reasonably regulate" free expression. The "Stand Up for Speech" litigation project is sponsored by the Foundation for Individual Rights in Education, a Philadelphia-based group that promotes free speech and due process rights at colleges and universities. Its aim is to eliminate speech codes and other campus policies that restrict expression. **In a report published this year, the foundation found that 58 of 427 major colleges and universities surveyed maintain restrictive speech codes despite what it called a "virtually unbroken string of legal defeats" against them dating to 1989.** Even in California — unique in the nation for two state laws that explicitly bar free speech restrictions at both public and private universities — the majority of campuses retain written speech codes, he said. Among 16 California State University campuses surveyed by the group, for instance, 11 were rated "red" for employing at least one policy that "substantially restricts" free speech. "**Universities are scared of people who demand censorship -- they're afraid of lawsuits and PR problems**," said Robert Shibley, the foundation’s senior vice president. "Unfortunately, they are more worried about that than about ignoring their 1st Amendment responsibilities," he added. "The point of the project is to balance out the incentives that cause universities to institute rules that censor speech." The foundation intends to target campuses in each of four federal court circuits; after each case is settled, it will file another lawsuit. In other cases filed Tuesday: — **Iowa State University students Paul Gerlich and Erin Furleigh challenged administrative rejection of their campus club T-shirt promoting legalization of marijuana**. The university said the shirt violated rules that bar the use of the school name to promote "dangerous, illegal or unhealthy" products and behavior, according to the complaint. — **Chicago State University faculty members Phillip Beverly and Robert Bionaz sued over what they said were repeated attempts to silence a blog they write on alleged administrative corruption. — [An] Ohio University student Isaac Smith challenged the campus speech code that forbids any act that "degrades, demeans or disgraces another."** University officials invoked the code to veto a T-shirt by Smith’s Students Defending Students campus group — which defends peers accused of campus disciplinary offenses. The T-shirt said, "We get you off for free," a phrase that administrators found "objectified women" and "promoted prostitution," the complaint said.

### Johnson

#### Not eliminating hate speech fosters victim blaming

**Johnson:** Johnson, Catherine B. [J.D. Candidate, Fordham University School of Law, 2001; B.A,, English and Communications, *magna cum laude,* Boston College, 1998.] “STOPPING HATE WITHOUT STIFLING SPEECH: RE-EXAMINING THE MERITS OF HATE SPEECH CODES ON UNIVERSITY CAMPUSES.” *Fordham Urban Law Journal.* 2000. RP

**The tolerance of racist, sexist or homophobic speech at a univer- sity destroys "the goals of inclusion, education, development of knowledge, and ethics** that universities exist and stand for.'1 Ad- vocates assert that a university cannot educate its students on the ideals of tolerance, equality and acceptance of difference when its inaction sends a message that such ideals are not significant enough to be vigilantly protected by the administration. **Without the protection of the university system, victims are left with a means of self-regulation, which places an undue burden on "vulnerable members of our society, such as isolated, young black undergraduates attending dominantly white campuses**.' **Hate speech is therefore "harmful to targets" in this setting, because they "perceive the university as taking sides through inaction" and leaving students "to their own resources in coping with the damage wrought." Such a burden takes attention, focus and energy away from their academic pursuits.**

#### Restrict speech when it makes it impossible to learn – even civil libertarians agree this is a good idea

**Johnson:** Johnson, Catherine B. [J.D. Candidate, Fordham University School of Law, 2001; B.A,, English and Communications, *magna cum laude,* Boston College, 1998.] “STOPPING HATE WITHOUT STIFLING SPEECH: RE-EXAMINING THE MERITS OF HATE SPEECH CODES ON UNIVERSITY CAMPUSES.” *Fordham Urban Law Journal.* 2000. RP

Absent the absolutists, **most civil libertarians will concede that some narrowly drafted hate speech codes are possible, even arguably necessary, on college campuses.28° Nadine Strossen, a self-de- scribed "free speech purist," recognized that restrictions on speech may be permissible when faced with a "countervailing goal of compelling importance, such as preventing violence**. ' The policy of the ACLU provides for this necessity by "not prohibit[ing] colleges and universities from enacting disciplinary codes aimed at restrict- ing acts of harassment, intimidation and invasion of privacy. The fact that words may be used in connection with otherwise actiona- ble conduct does not immunize such conduct from appropriate regulation. "282 **In the search for solutions to the hate debate the question is ar- guably not whether hate speech can be regulated on campus, but when and under what circumstances.283 This Note argues that it can be regulated in situations where the speech rises to the level of discriminatory harassment, the assaultive speech is intentionally di- rected at an individual in a one-on-one encounter, and effectively denies that individual an equal opportunity to learn. There is, as critics of codes contest, great danger in regulating speech on cam- pus, which is why this proposal is narrow and seeks to restrict speech as little as possible while still attempting to ensure all stu- dents their inherent rights of "equal voice, equal liberty, and equal education**. "284

#### It’s constitutional – its functionally an extension of constitutional guarentees to make the workplace safe from assault

**Johnson:** Johnson, Catherine B. [J.D. Candidate, Fordham University School of Law, 2001; B.A,, English and Communications, *magna cum laude,* Boston College, 1998.] “STOPPING HATE WITHOUT STIFLING SPEECH: RE-EXAMINING THE MERITS OF HATE SPEECH CODES ON UNIVERSITY CAMPUSES.” *Fordham Urban Law Journal.* 2000. RP

**Title VII of the Civil Rights Act of 1964 makes it "an unlawful employment practice for an employer ... to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, 2'8 5 color, religion, sex, or national origin**." The U.S. Supreme Court addressed the scope of this "abusive work environment" action in Harrisv. Forklift Systems, Inc.,286 in which a woman sued her for- mer employer for his sexist and insulting remarks on the job. 8 7 The U.S. District Court for the Middle District of Tennessee found for the defendant, asserting that the conduct did not "seri- ous[ly] affect the plaintiff's well-being" or cause her to "suffer in- jury.'28 The U.S. Supreme Court reversed, arguing that the standard under Title VII is not one requiring psychological injury; it is enough that the conduct is severe and pervasive enough to create an objectively hostile environment.289 The theory is that, even if no psychological injury is documented, a discriminatorily abusive work environment "can and often will detract from em- ployees' job performance, discourage employees from remaining on the job, or keep them from advancing in their careers. "290 Title VII and IX of the Civil Rights Act embody the Fourteenth Amendment's guarantee of equality291 and seek to prevent dis- crimination in the workplace and in education by forbidding the denial of a person's equal opportunity to participate and achieve. S**ome hate speech on college campuses rises to the level of verbal harassment, intimidation and discrimination, which deprives the victims of an equal educational opportunity.** Therefore, strong jus- tification exists for hostile environment based speech codes in the university setting.292 The workplace and the university setting are sufficiently similar to warrant the application of the workplace model in the university environment. Any differences between the two are "in degree more than [in] kind. ' 293 The essential purpose behind each institu- tion, the workplace or the university, is to ensure an environment that is conducive to equal productivity, equal thought, and equal opportunity to achieve. The two have many similar characteristics: The classroom, the lab, the dorm, the dining hall, and the like are all places in which students must live and work and perform successfully if they are not to be denied tangible future benefits, in just the same way that the workplace is a place in which em- ployees must live and work and perform successfully if they are not to be denied tangible future benefits.294 The two environments are analogous in several other respects. First, in both an employment setting and on a college campus the employee and the student generally interact with the same people on a regular basis, whether it be in meetings, classes, or social events.295 Second, in both of these contexts the participants share individual goals-success, promotion, academic achievement-and community goals-productivity, recognition, winning.296 Third, both employees and students have limited avenues of retreat in the face of harassing speech, and are therefore a captive audience.2 9 7

#### Consider motivations – it’s constitutional

**Johnson:** Johnson, Catherine B. [J.D. Candidate, Fordham University School of Law, 2001; B.A,, English and Communications, *magna cum laude,* Boston College, 1998.] “STOPPING HATE WITHOUT STIFLING SPEECH: RE-EXAMINING THE MERITS OF HATE SPEECH CODES ON UNIVERSITY CAMPUSES.” *Fordham Urban Law Journal.* 2000. RP

**A second provision to a campus code should incorporate a pen- alty enhancement approach, that would increase the punishment for any campus offense where bias was found to be a motivating factor**.3° This approach is constitutionally permissible under Mitchell and "would not single out particular types of expression, but rather particular types of motivation at the punishment ' 310 stage. **Under this provision, any campus offense, such as vandalism, in- vasion of privacy, assault or theft could be punished more severely if bias was found to be a motivating factor. The U.S. Supreme Court has held that it is constitutionally permissible to consider such aggravating factors as racial hatred in making sentencing de- terminations**.311 In Dawson v. Delaware, the Court held "that the Constitution does not erect a per se barrier to the admission of evidence concerning one's beliefs and associations at sentencing simply because those beliefs and associations are protected by the First Amendment. '312 Although Dawson does not involve a pen- alty enhancement provision, its rationale applies nonetheless. **Moreover, motive is permissibly taken into account under federal and state anti-discrimination laws, and where evidence of discrimi- nation is found, one cannot claim protection under the First Amendment's shield.** **A code, therefore, should be drafted based on a race-neutral** Ti- tle VII hostile environment model with a penalty enhancement component at the sentencing stage for those infractions said to be bias-motivated. **Such a code would be constitutionally permissible and would not place the Title VII statute above the demands of the First Amendment**. This solution is supported by the compelling in- terest in protecting the university community from the serious harm bias-inspired conduct inflicts.314

#### Counterplan ensures more deliberation by leveling the playing field

**Johnson:** Johnson, Catherine B. [J.D. Candidate, Fordham University School of Law, 2001; B.A,, English and Communications, *magna cum laude,* Boston College, 1998.] “STOPPING HATE WITHOUT STIFLING SPEECH: RE-EXAMINING THE MERITS OF HATE SPEECH CODES ON UNIVERSITY CAMPUSES.” *Fordham Urban Law Journal.* 2000. RP

#### 

**In analyzing ways to deal with the problem of hate speech on university campuses, one must not forget that the context is an educational environment, the mission of which is to educate young adults.** In implementing any policy on hate speech, a college must include an educational component that aims to teach students about intolerance, racism, sexism, homophobia and religious differences in a serious and meaningful way. **A narrowly drafted speech code would 'work to deter the most egregious and assaultive speech directed at individual students, but in order to ensure long-term change, educational programs must be put in place as well. Critics of codes argue for more speech, maintaining that open dialogue and exchange of ideas is the intent of the First Amendment in this country. In theory this principle is true, and if every- one had an equal voice and equal opportunity to be heard, then speech codes of any sort would not be needed. Unfortunately, this situation rarely exists.** This inequality does not mean, however, that more speech or open dialogue on the matter is not also an essential component in furthering this cause. Serious discussion of these issues should be fostered at a university through "counterculture courses, in the traditional rhetorical and academic mode, to examine and critically challenge hate-filled or bating or inciting speech" or notions about certain groups.315 Non-academic avenues should be encouraged as well, such as creating opportunities for demonstration projects and discourse as well as mediation and counseling provisions for all students.316 Mi- nority student organizations should also be strongly supported in addition to multi-cultural events and forums and workshops for discussion of controversial subjects.3 1 7 It is critical that students be provided with an opportunity to talk to each other and understand their differences, not mock them. Perhaps by fostering differences among the study body, speech codes in any form will become less and less necessary.

### McElwee

#### Allowing unrestricted free speech lets white nationalists build off of each other – Twitter proves.

**McElwee:** McElwee, Sean [Contributor, The Huffington Post] “The Case for Censoring Hate Speech.” *The Huffington Post.* July 2013. RP

It’s interesting to note how closely this idea resembles free market fundamentalism: simply get rid of any coercive rules and the “marketplace of ideas” will naturally produce the best result. **Humboldt State University compiled a visual map that charts 150,000 hateful insults aggregated over the course of 11 months in the U.S. by pairing Google‘s Maps API with a series of the most homophobic, racist and otherwise prejudiced tweets. The map’s existence draws into question the notion that the “twittersphere” can organically combat hate speech; hate speech is not going to disappear from twitter on its own.** The negative impacts of hate speech cannot be mitigated by the responses of third-party observers, as **hate speech aims at two goals. First, it is an attempt to tell bigots that they are not alone. Frank Collins — the neo-Nazi prosecuted in National Socialist Party of America v Skokie (1977) — said, “We want to reach the good people, get the fierce anti- Semites who have to live among the Jews to come out of the woodwork and stand up for themselves.”**

#### Counter-speech isn’t effective – it doesn’t redress the harm that has ALREADY occurred.

**McElwee:** McElwee, Sean [Contributor, The Huffington Post] “The Case for Censoring Hate Speech.” *The Huffington Post.* July 2013. RP

**Reddit, for instance, has become a veritable potpourri of hate speech**; consider Reddit threads like /r/nazi, /r/killawoman, /r/misogny, /r/killingwomen. M**y argument is not that these should be taken down because they are offensive, but rather because they amount to the degradation of a class that has been historically oppressed. Imagine a Reddit thread for /r/lynchingblacks or /r/ assassinating the president. We would not argue that we should sit back and wait for this kind of speech be “outspoken” by positive speech, but that it should be entirely banned**. American free speech jurisprudence relies upon the assumption that speech is merely the extension of a thought, and not an action. **If we consider it an action, then saying that we should combat hate speech with more positive speech is an absurd proposition; the speech has already done the harm, and no amount of support will defray the victim’s impression that they are not truly secure in this society. We don’t simply tell the victim of a robbery, “Hey, it’s okay, there are lots of other people who aren’t going to rob you.” Similarly, it isn’t incredibly useful to tell someone who has just had their race/gender/sexuality defamed, “There are a lot of other nice people out there.”**

#### The slippery slope is empirically denied – countries had more liberty.

**McElwee:** McElwee, Sean [Contributor, The Huffington Post] “The Case for Censoring Hate Speech.” *The Huffington Post.* July 2013. RP

People who argue against such rules generally portray their opponents as standing on a slippery precipice, tugging at the question “what next?” We can answer that question**: Canada, England, France, Germany, The Netherlands, South Africa, Australia and India all ban hate speech. Yet, none of these countries have slipped into totalitarianism. In many ways, such countries are more free when you weigh the negative liberty to express harmful thoughts against the positive liberty that is suppressed when you allow for the intimidation of minorities.**

### Hodulik

#### Limiting hate speech on campus is key to increase quality of education and ensure fewer minority drop outs.

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

**Moreover, many universities undertake extensive efforts to recruit and retain minority students." Studies conducted in con- nection with such recruitment efforts indicate that the quality of the campus environment for minority students is critical to their success**.'2 Recognizing that a harassment free environment would improve efforts to recruit and retain minority students, **policy makers at many universities concluded that an express prohibition on racist or discriminatory harassment would provide an additional tool in furthering equal access and affirmative action recruitment goals.**

#### Enforcement of speech codes doesn’t violate expression and successfully combats hate speech – Wisconsin codes prove.

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

The most serious concerns about adopting a rule restricting discriminatory harassment or hate speech were those involving legal questions as to whether any sort of restriction on expressive behavior could be accepted in a university setting. **The Wisconsin cases, however, provide little evidence to suggest that free expression has been deterred or suppressed as a result of enforcement of the university's antiharassment regulation. In the eighteen months in which it has been in force, a total of thirty-two complaints have been filed alleging violations of the Wisconsin rule.14 Of these, thirteen were dismissed because they were found not to violate the rule;35 two were dismissed following a hearing; and in ten cases, discipline was imposed**. 36 The disci- plinary sanctions imposed included one written apology, one warn- ing letter, seven disciplinary probations and one suspension.37 **All cases resulting in probation or suspension also involved conduct which violated some other provision of the student conduct code- an assault, a threat, or disorderly conduct, for example.38 In no case was discipline imposed in connection with a classroom dis- cussion or expression of opinion.3 9 In most of the cases leading to discipline, the rule violation involved the use of a discriminatory epithet rather than "other expressive behavior."**

#### No PC culture or chilling effect – Wisconsin code proves.

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

**As the controversy over speech rules has continued in the press and other media, they have been cited as evidence of a trend toward thought control, "politically correct" thinking, and other repressive evils.41 There is, however, little in these cases to suggest that the Wisconsin regulation has had the effect of cutting off debate within the university community, or that a narrow restric- tion on discriminatory, harassing speech creates a threat to free expression. Rather, the practical experiences with the Wisconsin rule indicate that the risk of a "chilling effect" on speech from a narrowly applicable rule is minimal or nonexistent.**

#### The Wisconsin codes only applied to individual attacks and didn’t chill classroom discussions

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

**Indeed, there is little to suggest that the existence and appli- cation of a narrow rule prohibiting discriminatory harassment has had the kind of "chilling effect" initially predicted by critics. The Wisconsin rule does not apply, and has not been applied, to the merely offensive, or in group settings or classrooms, but rather to abusive, one-to-one hate speech**. The small number of complaints leading to disciplinary action,47 and the kinds of behavior for which discipline has been imposed, simply do not support a conclusion that the rule has restricted debate or expression. **The reality is that discipline has been infrequently invoked; it has been applied only to incidents involving individually directed insults**. A wide range of expression has continued unabated and unaffected by the rule. 4 **Under these circumstances, no widespread "chilling" of campus speech activities or threat to first amendment values appears to have occurred as a result of enforcing the rule.**

#### Speech codes are the ONLY way to punish and deter racial slurs on campus.

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

\*\*\*Bracketed for offensiveness

**The existence of circumstances where no misconduct other than verbal harassment is at issue suggests the value of a separate rule treating hate speech. The lack of such a rule leaves a serious gap in the student conduct code, diminishing the university's ability to respond to cruel verbal abuse. Without regulation of discriminatory harassment there is no way for the university to take action against those who call a black student [the n word] "nigger**," a woman "cunt," who scrawl discriminatory epithets, or who place demeaning written materials in private living quarters.54 The fact that a majority of the incidents involving discriminatory speech can be punished because that misconduct happens to occur in conjunction with other student conduct code violations does not diminish the need for a separate rule to address incidents of this type.

#### Only speech codes enable punishment and education for hate speech

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

**Moreover, even when discriminatory harassment is part of a course of misconduct including other violations, the availability of a separate rule covering the expressive conduct can enhance the university's ability to respond. The presence of such a rule makes it possible to distinguish the discriminatory, harassing elements of the misconduct, and to identify and educate students about the separate and distinct kind of harm such behavior causes within the university community. In sum, while it may be possible to address many situations involving hate speech because they involve other student conduct violations, it is more useful and effective to have an additional provision dealing specifically with hate speech**. As the Wisconsin experience demonstrates, there have been, and likely will continue to be, instances of discriminatory harassment which could not be addressed without a separate rule limiting discriminatory expressive behavior. Even if these situations are few in number, their very existence justifies a separate regulatory response.

#### Codes don’t backfire – they’re enforced against white racists mostly – Wisconsin codes prove.

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

**A further concern expressed about the adoption of speech rules was that they would be used to repress the speech of the very groups they were meant to protect. Referring to historical civil rights abuses involving members of racial minorities, opponents of discriminatory speech rules have argued that such regulations can too easily be used against minorities expressing unpopular opi- nions.5 5 There is, however, nothing in the experiences with Wis- consin's rule to show that this has occurred in practice**. Although three complaints were brought against minority group members or females, only one was found to be within the scope of the rule. **In contrast, white males were named as the alleged violators in fifteen of the complaints filed under the rule.5 6 In the ten cases in which discipline was imposed, nine of the students disciplined were white males, and one was a white female. In all ten, the person harassed was female or a minority group member.** Thus, the fear of abusing the rule to the detriment of those intended to be protected has proved unfounded in the cases at Wisconsin.

#### Empirics confirm that speech codes increase awareness about the dangers of hate speech – this is uniquely valuable

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

The practical experiences with the Wisconsin rule discussed above suggest that some of the most serious concerns of the critics of regulation-those related to suppression of speech and misap- plication, for example-have not been realized. Questions remain, however, as to the effectiveness of hate speech rules for purposes of combating campus discrimination and discriminatory attitudes, or for assuring equality of educational opportunity. Some com- mentators have asserted that regulations are inadequate to address the underlying attitudes manifested in hate speech, and that the most effective antidote to discriminatory harassment is not rules, but some combination of education and more speech. These points are well-taken: educational efforts to address discrimination are certainly needed, and may be more effective than a regulatory approach; more speech may indeed be the best counter to discriminatory speech. **It does not follow, however, that a rule regulating discriminatory speech is an ineffective means to these ends. The Wisconsin experience illustrates the value of adopt- ing such a rule as part of more extensive educational and pro- grammatic efforts to deal with discrimination and harassment in the university environment. A rule prohibiting discriminatory speech is useful and effective as an additional response to institutional discrimination in several ways. First, the adoption of a rule, and the debate and discussion accompanying the process of adopting it, provide substantial ed- ucational benefits by focusing public attention on the problem of discriminatory harassment. Second, a rule can be an exercise of institutional speech**, a description of conduct that the university regards as harmful and inappropriate, and an expression of the institution's commitment to do something about it. The increased public awareness and the demonstration of university concern reflected by the adoption of a rule enhance other efforts to eliminate discrimination. Further, since most hate speech occurs under circumstances which do not allow for educational or speech responses**, a rule affords an additional opportunity to reach and educate individual students. At Wisconsin, none of the incidents leading to discipli- nary action under the hate speech rule occurred in classrooms or other forums for debate**; all took place in social or dormitory settings.5 9 In none of the cases did the use of abusive epithets lead to further opportunity for speech. In several, the result was an angry and potentially violent confrontation, while in others the victim was silent.60 As these situations illustrate, racial or discrim- inatory epithets, name-calling, and similar abusive speech do not afford opportunities for debate. More often, they cut it off, leaving the victim without an opportunity to respond.6' **The availability of the rule limiting speech provides a means of responding to a discriminatory problem, redress for the victims, and an occasion for educating the harassing individual.**

#### Speech codes are on balance effective and prevent hate speech – Wisconsin proves.

**Hodulik:** Hodulik, Patricia [University of Wisconsin-Madison. Senior System Legal Counsel, University of Wisconsin System Administration.] “Racist Speech on Campus.” *Wayne Law Review.* 1990-1991. RP

**In sum, the experiences at Wisconsin indicate that the adoption of narrow speech rules has proved to be a workable and generally effective policy. The enforcement of the rule has not stifled lively debate within the academic community, has not been used to repress minorities or other protected groups, and has proven useful in addressing harmful conduct which might otherwise have been ignored. It has served as an affirmation of the university's com- mitment to equal opportunity, and has stimulated debate and discussion concerning verbal discriminatory harassment and the nature of the constitutional right to free speech.** It has been an effective supplement to other disciplinary rules, and aids educa- tional efforts to teach students respect and tolerance. Furthermore, it has provided an additional means of redress for victims of abusive, discriminatory speech. **The rule is therefore, in most respects, a successful policy which has achieved its purposes, and has not led to the kinds of problems originally feared by opponents.**

### Varden

#### Defamation destroys rightful honor.

**Varden**, Helga, “A Kantian Conception of Free Speech,” in Freedom of Expression in a Diverse World, edited by Deirdre Golash. New York: Springer, 2010. RP

What about defamation, how does it involve coercion? **Attempts at defamation also constitute attempts non-consensually to deprive others of what is theirs, namely their good reputations as determined by their actions. Corresponding to a person’s innate right to freedom, Kant argues, is that person’s duty to “*Be an honourable human being... Rightful honour*... consists in asserting one’s worth as a human being in relation to others**” (6: 236). To defend one’s rightful honor is to defend one’s right to be recognized by others solely by the deeds one has performed. **Indeed, one’s reputation, Kant explains, “is an innate external belonging**” (6: 295); it can originally belong only to the person whose deeds are in question. **If others spread falsehoods about the life she has lived, then she has the right and duty to challenge their lies publicly, for her reputation belongs only to her and to no one else. A person’s reputation is not a means subject to other people’s choice; it is not a means others have a right to manipulate in order to pursue their own ends. To permit this, Kant argues, would be to permit others to use your person as their own mean**s, or to “make yourself a mere means for others” rather than also being “at the same time an end for them” (6: 236).

#### Holocaust denial amounts to a contradiction of the will.

**Varden**, Helga, “A Kantian Conception of Free Speech,” in Freedom of Expression in a Diverse World, edited by Deirdre Golash. New York: Springer, 2010. RP

Let me say briefly how this account of rightful honor analyzes cases like Holocaust-denial. **Part of what makes denying the Holocaust different from other types of defamation is that it involves people who are no longer alive. On the Kantian approach I am advancing, one’s reputation is seen as intimately connected with how one has interacted normatively with others** (6: 291). To interact normatively is to be capable of normativity or capable of interacting qua ‘nou- mena’, as Kant says, and not merely ‘qua phenomena’ or as embodied beings gov- erned by laws of nature. It is qua noumena that we are capable of deeds or of having actions imputed to us. And it is qua noumena that we can still be defamed long after we are dead. **Because right tracks normative relations, that one is no longer alive is beside the point**. What is more, anyone – “relatives or strangers” – can challenge the lies told by another on behalf of the dead. Indeed, the one challenging the defa- mation does so in virtue of her own duty to ensure the conditions under which we can have rightful honor (6: 295). **The reason is that those who spread such lies do not only express an unwillingness to respect those they defame in particular, but also they display a general unwillingness to interact in a way compatible with the rightful honor of everyone**. The absence of defamation is necessary for public opinion to be reconcilable with each person’s right to freedom and the corresponding duty to be an honorable being. **By defaming the dead, a person aims to falsify the public opinion, upon which everyone is dependent for rightful honor**. Consequently, every member of the public has a right to challenge such lies on behalf of the dead.

#### Seditious speech violates the framework

**Varden**, Helga, “A Kantian Conception of Free Speech,” in Freedom of Expression in a Diverse World, edited by Deirdre Golash. New York: Springer, 2010. RP

**To understand Kant’s condemnation of seditious speech, remember that Kant, as mentioned above, takes himself to have shown that justice is impossible in the state of nature or that there is no natural executive right.** Since Kant considers himself to have successfully refuted any defense of the natural executive right, he takes himself also to have shown that no one has the right to stay in the state of nature. **This, in turn, explains why Kant can and does consider seditious speech a public crime. The intention behind seditious speech is not merely to criticize the govern- ment or to discuss theories of government critically, say. In order to qualify as seditious, the speaker’s intention must be to encourage and support efforts to subvert the government or to instigate its violent overthrow, namely revolution**. To have such a right would be to have the right to destroy the state. **Since the state is the means through which right is possible, such a right would involve having the right to annihilate right** (6: 320). That is, since right is impossible in the state of nature, to have a right to subversion would be to have the right to replace right with might. **Since the state is the only means through which right can replace might, the state outlaws it. And since it is a crime that “endanger[s] the commonwealth” rather than citizens qua private citizens, it is a public crime** (6: 331).

#### Historical oppression justifies prohibition of hate speech under Kant.

Varden 10, Helga, “A Kantian Conception of Free Speech,” in Freedom of Expression in a Diverse World, edited by Deirdre Golash. New York: Springer, 2010. BE

Even if we accept that issues of systemic dependency explain why the state will regulate public spaces as well as some apparently private interactions, such as in the workplace, it is not immediately clear why the regulation of hate speech and speech amounting to harassment is necessary.14 Why are these kinds of speech not protected by free speech legislation – and why do they fall under public rather than private law? The answer lies in the way in which these kinds of speech track severe and pervasive historical oppression. Hate speech and harassment are exemplified by personal insults on the basis of factors like race, ethnicity, gender, sexual orienta- tion, disability and socioeconomic class. Moreover, it seems that achieving the insult is possible only because there has been a significant history of oppression of the insulted person. After all, blond jokes can’t really rise to the status of insult, but sexist comments about my gender can.15 Still, as we saw above, the fact that speech is offensive or annoying is not enough to make them proper objects of law, so what makes these cases different? On the Kantian view I have been developing, hate speech and speech amounting to harassment are not outlawed because they track private wrongdoing as such, but rather because they track the state’s historical and current16 inability to provide some group(s) of citizens with rightful conditions of interaction. This type of public law tries to remedy the fact that some citizens have been and still are ‘more equal than others’. Hence, if the state finds that it is still unable successfully to provide conditions under which protection and empowerment of its historically oppressed, and thus vulnerable, are secured, then it is within its rightful powers to legally regu- late speech and harassment to improve its ability to do so. By putting its weight behind historically oppressed and vulnerable citizens, the state seeks to overcome the problems caused by its lack of recognition in the past and its current failure to provide conditions in which its citizens interact with respect for one as free and equal. Therefore, whether or not any instance of speech actually achieves insult is inconsequential, for that is not the justification for the state’s right to outlaw it. Rather, laws regulating speech and harassment track the state’s systemic inability to provide rightful interaction for all of its citizens. Note that this argument does not, nor must it, determine which particular usages of hate speech and speech amounting to harassment should be banned. It only explains why certain kinds and circumstances of speech and harassment can and should be outlawed and why public law, rather than private law, is the proper means for doing so. Determining which types and how it should be banned is matter for public debate and reflection followed by public regulation on behalf of all citizens.

### Carroll

#### Multiple legal scholars prove that hate speech is in fact protected.

**Carroll:** Carroll, Lauren [Contributor, Punditfact] “CNN’s Chris Cuomo: First Amendment doesn’t cover hate speech.” *Punditfact.* May 2015. RP

Hate speech is not the same thing as free speech, wrote CNN anchor Chris Cuomo on the ultimate forum for public discourse: [Twitter](https://twitter.com/ChrisCuomo/status/595934009764487168). Amid debate about free speech after a shooting at an anti-Muslim protest in Texas , a user tweeted at Cuomo: "Too many people are trying to say hate speech (doesn’t equal) free speech." In response, Cuomo, who has a law degree, said, "It doesn't. Hate speech is excluded from protection. Don’t just say you love the Constitution … read it." The claim that the Constitution doesn’t protect hate speech incited heavy backlash, so we decided to flesh it out and see if there’s any truth to Cuomo’s statement. First let’s get the obvious out of the way: The concept of "hate speech" -- speech that negatively targets people based on personal traits like religion or race -- is not addressed in the Constitution. The First Amendment of the Constitution, included in the Bill of Rights, says: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." That may seem cut and dried, but as with the rest of the Constitution, there are nuances to the concept of free speech**. In the course of interpreting the amendment, courts have decided that certain speech does not fall under protections offered by the First Amendment. Unprotected speech includes things such as threats, child pornography and "**[**fighting words**](https://www.law.cornell.edu/wex/fighting_words)**" (speech that would likely draw someone into a fight, such as personal insults). But hate speech is not included in that list**. However, sometimes hate speech can also be considered "fighting words" or a threat. In those cases, hate speech would be excluded from protections offered by the First Amendment, said James Weinstein, an expert in free speech at Arizona State University’s Sandra Day O’Connor Law School. **For example, if someone hurled racial epithets during a heated argument with another individual, that could be considered both fighting words and hate speech, in which case it would not have First Amendment protection. But it would be unconstitutional to ban someone from putting those same words on a picket sign at a protest -- it would still be hate speech, but it wouldn’t fall under one of the unprotected categories. "**With that caveat, the overwhelming understanding is that ‘hate speech’ is constitutionally protected in the United States," said Michael Herz, co-director of the Floersheimer Center for Constitutional Democracy at Cardozo Law. "Indeed, that protection makes this country [different from most other countries](http://www.nytimes.com/2008/06/11/world/americas/11iht-hate.4.13645369.html?pagewanted=all&_r=0) in the world." To his credit, Cuomo later clarified his position and said he was referring to the type of hate speech that falls under unprotected categories -- specifically citing the [1941 Supreme Court ruling](http://www.oyez.org/cases/1940-1949/1941/1941_255) in Chaplinsky vs. New Hampshire, which excluded fighting words from the First Amendment. (In the Chaplinsky case, the fighting words were not hate speech; rather they were "God damned racketeer" and "damned fascist.") "Of course the First Amendment does not expressly mention hate speech among its six protections in its text," Cuomo said. "I meant to refer to the relevant case law about the (First Amendment) to see what is protected. **There you quickly find that hate speech is almost always protecte**d. The keyword is ‘almost.’ Hate speech can be prohibited; that is why I keep citing the Chaplinsky case and the fighting words doctrine." ([Read his full response on Facebook.](https://www.facebook.com/ChrisCCuomo/posts/1585229788396338))Even with this clarification, Weinstein said Cuomo’s argument isn’t without holes. If a statute bans hate speech, it has to be because it counts as a threat or fighting words -- not simply because it is hate speech. This may seem like a slight nuance, but it’s important**. In 2002, the** [**Supreme Court ruled**](http://www.oyez.org/cases/2000-2009/2002/2002_01_1107) **that it’s constitutional for a state to have a statute that bans cross-burning -- but only if prosecutors can prove criminal intent to threaten. They cannot, for example, ban a burning cross used only to demonstrate political ideology. In another cross-burning case, the** [**Supreme Court ruled in 1991**](http://www.oyez.org/cases/1990-1999/1991/1991_90_7675) **that it’s unconstitutional to up the penalty or charge people with a crime solely because their actions constitute hate speech.** "The fact that something is hate speech or not is irrelevant for First Amendment analysis," Weinstein said. Herz, of Cardozo, added that there hasn’t been a fighting words case in the Supreme Court since Chaplinsky in 1941, and he believes it likely would have a different outcome today. Of course, reasonable legal minds can disagree on these nuances. Alexander Tsesis, a First Amendment law professor at Loyola University Chicago, said he believes it can be constitutional to prohibit hate speech, and the 2002 cross-burning ruling is a good example of that. Tsesis said the jury’s still out on whether or not there’s potential for the Supreme Court to ban hate speech more broadly, noting that there’s some potential for laws that prohibit speech that defames an entire group, such as causing a group injury by saying a false stereotype. Although Tsesis believes that would be constitutional, he acknowledged that most scholars disagree. "In the United States, the only two types of hate speech laws likely to survive are those that are likely to elicit an imminent fight and those that are truly threatening," he said. Cuomo said, "Hate speech is excluded from protection" under the First Amendment. The Supreme Court has ruled that certain categories of speech are excluded from constitutional protection, such as a threat or "fighting words." Sometimes, speech can be both a threat and hate speech, in which case it would not necessarily have First Amendment protection. But hate speech on its own -- such as on a picket sign or a blog -- is not excluded from protection. It may only be incidentally excluded. Cuomo tried to clarify his point after the fact, giving an explanation similar to the examples we hashed out here. But on his specific claim, the jurisprudence works against him. We rate his statement False.

### Harper

#### Anger about PC culture stems from a white-centric view.

**Harper:** Harper, Shaun R. [Contributor, The Washington Post] “No, protesters who point out campus racism aren’t silencing anybody.” *The Washington Post.* March 2016. RP

**Critics of the Black Lives Matter movement and its associated racial justice protests on college campuses believe free speech is under attack. Activists have been dubbed whiny, hypersensitive “crybullies” who silence others by calling out racism. Black collegians are exercising their rights to speak out against racism and to demand more inclusive, less dehumanizing learning environments. The outrage about a new era of “political correctness” fails to understand how black students, faculty, and staff at predominantly white institutions have felt for centuries that their freedom to speak out against campus racism has been effectively suppressed**. I have spent my academic career conducting research on black undergraduate students’ experiences, including a recently published study on racist stereotypes black men face at institutions where they are persistently underrepresented. In addition, college presidents and other administrators annually hire researchers from the center I direct at the University of Pennsylvania to assess their campuses’ racial climates. We write reports to institutions that include our findings and recommendations. At too many schools I have studied, professors have accused black students of plagiarism because their papers were so well written. **Racial epithets have been painted on black students’ residence hall doors, and nooses have been hung around campuses**. Their peers in predominantly white fraternities have denied black students membership on the basis of race, chanted the N-word, and hosted blackface and racist theme parties parodying their cultures.

### Lawrence – Hollers

#### Advocates for free speech assume a universal perspective, but ignore the views of those most subordinated by racist speech – minorities.

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “If He Hollers Let Him Go: Regulating Racist Speech on Campus.” *Duke Law Journal.* 1990. RP

I write this Article from within the cauldron of this controversy.19 **I make no pretense of dispassion or objectivity, but I do claim a deep commitment to the values that motivate both sides of the debate**. **As I struggle with the tension between these constitutional values, I particularly appreciate the experience of both belonging and not belonging that gives to African Americans and other outsider groups a sense of duality**. W.E.B. Du Bois-scholar and founder of the National Association for the Advancement of Colored People--called the gift and burden inherent to the dual, conflicting heritage of all African Americans their "second- sight**." The "double consciousness" of groups outside the ethnic main- stream is particularly apparent in the context of this controversy. Blacks know and value the protection the first amendment affords those of us who must rely upon our voices to petition both government and our neighbors for redress of grievances.** Our political tradition has looked to "the word," to the moral power of ideas, to change a system when neither the power of the vote nor that of the gun are available. This part of us has known the experience of belonging and recognizes our common and inseparable interest in preserving the right of free speech for all. **But we also know the experience of the outsider. The Framers excluded us from the protection of the first amendment. The same Constitution that established rights for others endorsed a story that proclaimed our inferiority. It is a story that remains deeply ingrained in the American psyche. We see a different world than that which is seen by Americans who do not share this historical experience.** We often hear racist speech when our white neighbors are not aware of its presence. It is not my purpose to belittle or trivialize the importance of de- fending unpopular speech against the tyranny of the majority. There are very strong reasons for protecting even racist speech. Perhaps the most important reasons are that it reinforces our society's commitment to the value of tolerance, and that, by shielding racist speech from govern- ment regulation, we will be forced to combat it as a community. These reasons for protecting racist speech should not be set aside hastily, and I will not argue that we should be less vigilant in protecting the speech and associational rights of speakers with whom most of us would disagree. But I am deeply concerned about the role that many civil libertarians have played, or the roles we have failed to play, in the continuing, real-life struggle through which we define the community in which we live. **I fear that by framing the debate as we have-as one in which the liberty of free speech is in conflict with the elimination of racism-we have advanced the cause of racial oppression and have placed the bigot on the moral high ground, fanning the rising flames of racism. Above all, I am troubled that** we have not listened to the real victims**, that we have shown so little empathy or understanding for their injury, and that we have abandoned those individuals whose race, gender, or sexual orienta- tion provokes others to regard them as second class citizens. These indi- viduals' civil liberties are most directly at stake in the debate**.27

#### Speech codes are constitutional – Brown v Board of Education.

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “If He Hollers Let Him Go: Regulating Racist Speech on Campus.” *Duke Law Journal.* 1990. RP

**The landmark case of Brown v. Board of Education is not a case we normally think of as a case about speech**. As read most narrowly, the case is about the rights of black children to equal educational opportu- nity. **But Brown can also be read more broadly to articulate a principle central to any substantive understanding of the equal protection clause, the foundation on which all anti-discrimination law rests. This is the principle of equal citizenship**. Under that principle "every individual is presumptively entitled to be treated by the organized society as a respected, responsible, and participating member."' 36 Furthermore, it re- quires the affirmative disestablishment of societal practices that treat peo- ple as members of an inferior or dependent caste, as unworthy to participate in the larger community. The holding in Brown-that racially segregated schools violate the equal protection clause-reflects the fact that segregation amounts to a demeaning, caste-creating practice**. The key to this understanding of Brown is that the practice of segregation, the practice the Court held inherently unconstitutional, was speech.** **Brown held that segregation is unconstitutional not simply be- cause the physical separation of black and white children is bad38 or be- cause resources were distributed unequally among black and white schools. 39 Brown held that segregated schools were unconstitutional primarily because of the message segregation conveys-the message that black children are an untouchable caste, unfit to be educated with white children.4° Segregation serves its purpose by conveying an idea. It stamps a badge of inferiority upon blacks**, and this badge communicates a message to others in the community, as well as to blacks wearing the badge, that is injurious to blacks. Therefore, Brown may be read as regulating the content of racist speech**. As a regulation of racist speech, the decision is an exception to the usual rule that regulation of speech con- tent is presumed unconstitutional.**

#### A2 conflates speech and conduct.

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “If He Hollers Let Him Go: Regulating Racist Speech on Campus.” *Duke Law Journal.* 1990. RP

**Some civil libertarians argue that my analysis of Brown conflates speech and conduct**. They maintain that the segregation outlawed in Brown was discriminatory conduct, not speech, and the defamatory message conveyed by segregation simply was an incidental by-product of that conduct. This position is often stated as follows: "Of course segre- gation conveys a message but this could be said of almost all conduct. To take an extreme example, a murderer conveys a message of hatred for his victim. [But], we would not argue that we can't punish the murder- the primary conduct-merely because of this message which is its secon- dary byproduct."'42 This objection to my reading ofBrown misperceives the central point of the argument. I have not ignored the distinction between the speech and conduct elements of segregation by mistake. Rather, my analysis turns on that distinction. **It asks the question whether there is a purpose for outlawing segregation that is unrelated to its message and it concludes the answer is "no."** If, for example, John W. Davis, counsel for the Board of Education of Topeka, Kansas, had been asked during oral argument in Brown to state the Board's purpose in educating black and white children in sepa- rate schools, he would have been hard pressed to answer in a way unre- lated to the purpose of designating black children as inferior.44 If segregation's primary goal is to convey the message of white supremacy, then Brown's declaration that segregation is unconstitutional amounts to a regulation of the message of white supremacy.45 Properly understood, Brown and its progeny require that the systematic group defamation of segregation be disestablished. 4 6 Although the exclusion of black children from white schools and the denial of educational resources and associa- tion that accompany exclusion can be characterized as conduct, these particular instances of conduct are concerned primarily with communi- cating the idea of white supremacy. **The non-speech elements are by- products of the main message rather than the message simply a by-prod- uct of unlawful conduct**.47 The public accommodations provisions of the Civil Rights Act of 196448 provide another example illuminating why laws against discrimi- nation are also regulation of racist speech. The legislative history and the Supreme Court's opinions upholding the Act establish that Congress was concerned that blacks have access to public accommodations to eliminate impediments to the free flow of interstate commerce, 49 but this purpose could have been achieved through a regime of separate-but-equal accom- modations. Title II goes further; it incorporates the principal of the in- herent inequality of segregation, and prohibits restaurant owners from providing separate places at the lunch counter for "whites" and "coloreds." Even if the same food and the same service are provided, separate-but-equal facilities are unlawful. If the signs indicating separate facilities remain in place, then the statute is violated despite proof that restaurant patrons are free to disregard the signs.50 **Outlawing these signs graphically illustrates my point that anti-discrimination laws are primarily regulations of the content of racist speech. Another way to understand the inseparability of racist speech and discriminatory conduct is to view individual racist acts as part of a total- ity**. When viewed in this manner, white supremacists' conduct or speech is forbidden by the equal protection clause.5' **The goal of white supremacy is not achieved by individual acts or even by the cumulative acts of a group, but rather it is achieved by the institutionalization of the ideas of white supremacy**. The institutionalization of white supremacy within our culture has created conduct on the societal level that is greater than the sum of individual racist acts. The racist acts of millions of indi-viduals are mutually reinforcing and cumulative because the status quo of institutionalized white supremacy remains long after deliberate racist actions subside.

#### The public/private distinction has empirically allowed racists to try and avoid responsibility

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “If He Hollers Let Him Go: Regulating Racist Speech on Campus.” *Duke Law Journal.* 1990. RP

**There are critics who would contend that Brown is inapposite be- cause the equal protection clause only restricts government behavior, whereas the first amendment protects the speech of private persons**. They say, "Of course we want to prevent the state from defaming blacks, but we must continue to be vigilant about protecting the speech rights, even of racist individuals, from the government. In both cases our con- cern must be protecting the individual from the unjust power of the state." **At first blush, this position seems persuasive, but its persuasiveness relies upon the mystifying properties of constitutional ideology. In par- ticular, I refer to the state action doctrine. By restricting the applica- tion of the fourteenth amendment to discrimination implicating the government, the state action rule immunizes private discriminators from constitutional scrutiny. In so doing, it leaves untouched the largest part of the vast system of segregation in the United States**. The Civil Rights Cases, in which this doctrine was **firmly established, stands as a monument preserving American racial discrimination. Although the origin of state action is textual, countervailing values of privacy, freedom of asso- ciation, and free speech all have been used to justify the rule's exculpa- tion of private racism.** 61 In the abstract, the right to make decisions about how we will edu- cate our children or with whom we will associate is an important value in American society. But when we decontextualize by viewing this privacy value in the abstract, we ignore the way it operates in the real world.62 We do not ask ourselves, for example, whether it is a value to which all persons have equal access. And we do not inquire about who has the resources to send their children to private school or move to an exclusive suburb.63 The privacy value, when presented as an ideal, seems an ap- propriate limitation on racial justice because we naively believe that eve- ryone has an equal stake in this value. The argument that distinguishes private racist speech from the gov- ernment speech outlawed by Brown suffers from the same decontextual- izing ideology. **If the government is involved in a joint venture with private contractors to engage in the business of defaming blacks, should it be able to escape the constitutional mandate that makes that business illegal simply by handing over the copyright and the printing presses to its partners in crime? I think not. And yet this is the essence of the position that espouses first amendment protection for those partners**. In an insightful article considering the constitutional implications of government regulation of pornography, Frank Michelman has observed that the idea of state action plays a crucial, if unspoken, role for judges and civil libertarians who favor an absolute rule against government reg- ulation of private pornographic publications (or racist speech), even when that expression is causative "of effects fairly describable ... as deprivations of liberty and denials of equal protection of the laws." 64 He notes that judges and civil libertarians would not balance the evils of private subversions of liberty and equal protection against the evils of government censorship because "the Constitution, through the state ac- tion doctrine, in effect tells them not to." 65 Michelman suggests that the state action doctrine, by directing us to the text of the fourteenth amend- ment, diverts our attention from the underlying issue-whether we should balance the evils of private deprivations of liberty against the gov- ernment deprivations of liberty that may arise out of state regulations designed to avert those private deprivations. When a person responds to the argument that Brown mandates the abolition of racist speech by reciting the state action doctrine, she fails to consider that the alternative to regulating racist speech is infringement of the claims of blacks to liberty and equal protection.6 6 The best way to constitutionally protect these competing interests is to balance them di- rectly. To invoke the state action doctrine is to circumvent our value judgment as to how these competing interests should be balanced.67 The deference usually given to the first amendment values in this balance is justified using the argument that racist speech is unpopular speech, that, like the speech of civil rights activists, pacifists, and reli- gious and political dissenters, it is in need of special protection from majoritarian censorship. But for over three hundred years, racist speech has been the liturgy of America's leading established religion, the religion of racism. Racist speech remains a vital and regrettably popular charac- teristic of the American vernacular. 6 It must be noted that there has not yet been satisfactory retraction of the government-sponsored defamation in the slavery clauses,69 the Dred Scott decision,70 the black codes, the segregation statutes, and countless other group libels. The injury to blacks is hardly redressed by deciding the government must no longer injure our reputation if one then invokes the first amendment to ensure that racist speech continues to thrive in an unregulated private market. 71 Consider, for example, the case of MeLaurin v. Oklahoma State Re- gents,72 where the University of Oklahoma graduate school, under order by a federal court to admit McLaurin, a black student, designated a spe- cial seat, roped off from other seats, in each classroom, the library, and the cafeteria. The Supreme Court held that this arrangement was uncon- stitutional because McLaurin could not have had an equal opportunity to learn and participate if he were humiliated and symbolically stigmatized as an untouchable. Would it be any less injurious if all McLaurin's class- mates had shown up at the class wearing blackface? Should this sym- bolic speech be protected by the constitution? Yet, according to a Time magazine report, last fall at the University of Wisconsin "members of the Zeta Beta Tau fraternity staged a mock slave auction, complete with some pledges in blackface.''73 More recently, at the same university, white male students trailed black female students shouting, 'I've never tried a nigger before.' "74 These young women were no less severely in- jured than was Mr. McLaurin simply because the University did not di- rectly sponsor their assault. If the University fails to protect them in their right to pursue their education free from this kind of degradation and humiliation, then surely there are constitutional values at stake. It is a very sad irony that the first instinct of many civil libertarians has been to express concern for possible infringement of the assailants' liberties while barely noticing the constitutional rights of the assailed. Shortly after Brown, many southern communities tried to escape the mandate of desegregation by closing public schools and opening private (white) academies. These attempts to avoid the fourteenth amendment through the privatization of discrimination consistently were invalidated by the courts.75 In essence, the Supreme Court held that the defamatory message of segregation would not be insulated from constitutional pro- scription simply because the speaker was a non-government entity. The Supreme Court also has indicated that Congress may enact leg- islation regulating private racist speech. In upholding the public accom- modations provisions of Title II of the Civil Rights Act of 196476 in HeartofAtlanta Motel v. UnitedStates, the Court implicitly rejected the argument that the absence of state action meant that private discrimina- tors were protected by first amendment free speech and associational rights.7 7 Likewise in Bob Jones University v. United States,78 the court sustained the Internal Revenue Service's decision to discontinue tax ex- empt status for a college with a policy against interracial dating and mar- riage. The college framed its objection in terms of the free exercise of religion, since their policy was religiously motivated, but the Supreme Court found that the government had "a fundamental, overriding inter- est in eradicating racial discrimination in education" that "substantially outweighs whatever burden denial of tax benefits" 79 placed on the col- lege's exercise of its religious beliefs. It is difficult to believe that the University would have fared any better under free speech analysis or if the policy had been merely a statement of principle rather than an en- forceable disciplinary regulation.80 Regulation of private racist speech also has been held constitutional in the context of prohibition of race- designated advertisements for employees, home sales, and rentals.8' Thus Brown and the anti-discrimination law it spawned provide pre- cedent for my position that the content regulation of racist speech is not only permissible but may be required by the Constitution in certain cir- cumstances. This precedent may not mean that we should advocate the government regulation of all racist speech, but it should give us pause in assuming absolutist positions about regulations aimed at the message or idea such speech conveys. If we understand Brown-the cornerstone of the civil rights movement and equal protection doctrine-correctly, and if we understand the necessity of disestablishing the system of signs and symbols that signal blacks' inferiority, then we should not proclaim that all racist speech that stops short of physical violence must be defended.

#### Nothing differentiates racial slurs from fighting words.

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “If He Hollers Let Him Go: Regulating Racist Speech on Campus.” *Duke Law Journal.* 1990. RP

**Face-to-face racial insults, like fighting words, are undeserving of first amendment protection for two reasons. The first reason is the im- mediacy ofthe injurious impact ofracial insults**. The experience ofbeing called "nigger," "spic," "Jap," or "kike" is like receiving a slap in the face. The injury is instantaneous. There is neither an opportunity for intermediary reflection on the idea conveyed8 7 nor an opportunity for responsive speech. The harm to be avoided is both clear and present. The second reason that racial insults should not fall under protected speech relates to the purpose underlying the first amendment. If the pur- pose of the first amendment is to foster the greatest amount of speech, then racial insults disserve that purpose. **Assaultive racist speech func- tions as a preemptive strike. The racial invective is experienced as a blow, not a proffered idea, and once the blow is struck, it is unlikely that dialogue will follow**. Racial insults are undeserving of first amendment protection because the perpetrator's intention is not to discover truth or initiate dialogue but to injure the victim.88 **The fighting words doctrine anticipates that the verbal "slap in the face" of insulting words will provoke a violent response** with a resulting breach of the peace. **When racial insults are hurled at minorities, the response may be silence or flight rather than a fight, but the preemptive effect on further speech is just as complete as with fighting words**.89 **Wo- men and minorities often report that they find themselves speechless in the face of discriminatory verbal attacks**. This inability to respond is not the result of oversensitivity among these groups, as some individuals who oppose protective regulation have argued. Rather, it is the product of several factors, all of which reveal the non-speech character of the initial preemptive verbal assault. The first factor is that the visceral emotional response to personal attack precludes speech. Attack produces an in- stinctive, defensive psychological reaction. Fear, rage, shock, and flight all interfere with any reasoned response. Words like "nigger," "kike," and "faggot" produce physical symptoms that temporarily disable the victim, and the perpetrators often use these words with the intention of producing this effect. **Many victims do not find words of response until well after the assault when the cowardly assaulter has departed.**

#### More view from nowhere stuff.

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “If He Hollers Let Him Go: Regulating Racist Speech on Campus.” *Duke Law Journal.* 1990. RP

When I visited my sister's family a few days after this incident, the injury they had suffered was evident. The wounds were fresh. My sister, a care-giver by nature and vocation, was clearly in need of care. My nephews were quiet. Their faces betrayed the aftershock of a recently inflicted blow and a newly discovered vulnerability. I knew the pain and scars were no less enduring because the injury had not been physical. **And when I talked to my sister, I realized the greatest part of her pain came not from the incident itself but rather from the reaction of white parents who had come to the school in unprecedented numbers to protest the offending students' expulsion. "It was only a prank." "No one was physically attacked." "How can you punish these kids for mere words, mere drawings.**" Paula's pain was compounded by the failure of these people, with whom she had lived and worked, to recognize that she had been hurt, to understand in even the most limited way the reality of her pain and that of her family. **Many people called the incident "isolated." But black folks know that no racial incident is "isolated" in America. That is what makes the incidents so horrible, so scary. It is the knowledge that they are not the isolated unpopular speech of a dissident few that makes them so frighten- ing**. These incidents are manifestations of an ubiquitous and deeply in- grained cultural belief system, an American way of life.' **Too often in recent months, as I have debated this issue with friends and colleagues, I have heard people speak of the need to protect "offensive" speech. The word offensive is used as if we were speaking of a difference in taste, as if I should learn to be less sensitive to words that "offend" me.' I cannot help but believe that those people who speak of offense-those who argue that this speech must go unchecked-do not understand the great differ- ence between offense and injury: They have not known the injury my sister experienced, have not known the fear, vulnerability, and shame ex- perienced by the Wisconsin coeds**. There is a great difference between the offensiveness of words that you would rather not hear-because they are labeled dirty, impolite, or personally demeaning-and the injury in- flicted by words that remind the world that you are fair game for physi- cal attack, evoke in you all of the millions of cultural lessons regarding your inferiority that you have so painstakingly repressed, and imprint upon you a badge of servitude and subservience for all the world to see. **It is instructive that the chief proponents for sanctioning people who inflict these injuries are women and people of color, and there are few among these groups who take the absolutist position that any regulation of this speech is too much.'1 3**

#### History of the first amendment is racist

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “If He Hollers Let Him Go: Regulating Racist Speech on Campus.” *Duke Law Journal.* 1990. RP

In striking a balance, we also must think about what we are weighing on the side of speech. **Most blacks unlike many white civil libertarians do not have faith in free speech as the most important vehicle for liberation. The first amendment coexisted with slavery, and we still are not sure it will protect us to the same extent that it protects whites**. It often is argued that minorities have benefited greatly from first amendment protection and therefore should guard it jealously. We are aware that the struggle for racial equality has relied heavily on the persuasion of peaceful protest protected by the first amendment, but experience also teaches us that our petitions often go unanswered until they disrupt business as usual and require the self-interested attention of those persons in power. Paradoxically, the disruption that renders this speech effective usually causes it to be considered undeserving of first amendment protection. **Note the cruel irony in the news story appearing in the "Newsreel" at the beginning of this Article that describes Stanford President Kennedy's justification for prosecuting students engaged in a peaceful sit-in for violation of the University's Fundamental Standard. While protesting students were punished, the racist behavior the students were protesting went unpunished. This lack of symmetry was justified on the grounds that punishment might violate the bigots' first amendment rights.** Once faith in this symmetry is shaken, the absolutist position loses credence. It is difficult for us to believe that we should fight to protect speech rights for racists because that will ensure our own speech rights. **Our experience is that the American system of justice has never been symmetrical where race is concerned. No wonder we see equality as a precondition to free speech, and we place more weight on that side of the balance aimed at the removal of the badges and incidents of slavery that continue to flourish in our culture.**

#### Racist speech destroys the marketplace of ideas

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “If He Hollers Let Him Go: Regulating Racist Speech on Campus.” *Duke Law Journal.* 1990. RP

**Blacks and other people of color are equally skeptical about the ab- solutist argument that even the most injurious speech must remain un- regulated because in an unregulated marketplace of ideas the best ideas will rise to the top and gain acceptance**. 132 Our experience tells us the opposite. We have seen too many demagogues elected by appealing to America's racism. We have seen too many good, liberal politicians shy away from the issues that might brand them as too closely allied with us. **The American marketplace of ideas was founded with the idea of the racial inferiority of non-whites as one of its chief commodities, and** ever since the market opened, racism has remained its most active item in trade. But it is not just the prevalence and strength of the idea of racism that makes the unregulated marketplace of ideas an untenable paradigm for those individuals who seek full and equal personhood for all. **The real problem is that the idea of the racial inferiority of non-whites infects, skews, and disables the operation of the market** (like a computer virus, sick cattle, or diseased wheat). **Racism is irrational and often unconscious. Our belief in the inferiority of non-whites trumps good ideas that contend with it in the market, often without our even knowing it. In addition, racism makes the words and ideas of blacks and other de- spised minorities less saleable, regardless of their intrinsic value, in the marketplace of ideas.** 136 **It also decreases the total amount of speech that enters the market by coercively silencing members of those groups who are its targets**.137 Racism is an epidemic infecting the marketplace of ideas and ren- dering it dysfunctional. Racism is ubiquitous. We are all racists. 138 Ra- cism is also irrational. Individuals do not embrace or reject racist beliefs as the result of reasoned deliberation.139 For the most part, we do not recognize the myriad ways in which the racism pervading our history and culture influences our beliefs. In other words, most of our racism is unconscious. The disruptive and disabling effect on the market of an idea that is ubiquitous and irrational, but seldom seen or acknowledged, should be apparent. **If the community is considering competing ideas about pro- viding food for children, shelter for the homeless, or abortions for preg- nant women, and the choices made among the proposed solutions are influenced by the idea that some children, families, or women are less deserving of our sympathy because they are not white, then the market is not functioning** as either John Stuart Mill or Oliver Wendell Holmes en- visioned it. In John Ely's terms there is a "process defect."14'

#### Racist speech creates process defects that states have an obligation to remove from the marketplace of ideas

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “If He Hollers Let Him Go: Regulating Racist Speech on Campus.” *Duke Law Journal.* 1990. RP

\*\*\*Bracketed for offensive language

**Professor Ely coined the term "process defect" in the context of de- veloping a theory to identify instances in which legislative action should be subjected to heightened judicial scrutiny under the equal protection clause. Ely argues that the courts should interfere with the normal majoritarian political process when the defect of prejudice bars groups subject to widespread vilification from participation in the political process** and causes governmental decisionmakers to misapprehend the costs and benefits of their actions. **This same process defect that excludes vilified groups and misdirects the government operates in the market- place of ideas.** Mill's vision of truth emerging through competition in the marketplace of ideas relies on the ability of members of the body politic to recognize "truth" as serving their interest and to act on that recognition. As such, this vision depends upon the same process that James Madison referred to when he described his vision of a democracy in which the numerous minorities within our society would form coalitions to create majorities with overlapping interests through pluralist wheeling and dealing. **Just as the defect of prejudice [obscures] ~~blinds~~ the white voter to interests that overlap with those of vilified minorities, it also [obscures] ~~blinds~~ him to the "truth" of an idea or the efficacy of solutions associated with that vilified group**. And just as prejudice causes the governmental deci- sionmakers to misapprehend the costs and benefits of their actions, it also causes all of us to misapprehend the value of ideas in the market. **Prejudice that is unconscious or unacknowledged causes even more distortions in the market. When racism operates at a conscious level, opposing ideas may prevail in open competition for the rational or moral sensibilities of the market participant. But when an individual is unaware of his prejudice, neither reason nor moral persuasion will likely succeed**. 146 **Racist speech also distorts the marketplace of ideas by muting or devaluing the speech of blacks and other non-whites**. An idea that would be embraced by large numbers of individuals if it were offered by a white individual will be rejected or given less credence because its author be- longs to a group demeaned and stigmatized by racist beliefs.

#### Free speech means less discussion

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “If He Hollers Let Him Go: Regulating Racist Speech on Campus.” *Duke Law Journal.* 1990. RP

**Finally, racist speech decreases the total amount of speech that reaches the market**. I noted earlier in this Article the ways in which racist speech is inextricably linked with racist conduct. The primary purpose and effect of the speech/conduct that constitutes white supremacy is the exclusion of non-whites from full participation in the body politic. Sometimes the speech/conduct of racism is direct and obvious. **When the Klan burns a cross on the lawn of a black person who joined the NAACP or exercised his right to move to a formerly all-white neighborhood, the effect of this speech does not result from the persuasive power of an idea operating freely in the market. It is a threat, a threat made in the context of a history of lynchings, beatings, and economic reprisals that made good on earlier threats, a threat that silences a potential speaker. The black student who is subjected to racial epithets is likewise** threatened and silenced. Certainly she, like the victim of a cross-burning, may be uncommonly brave or foolhardy and ignore the system of violence in which this abusive speech is only a bit player. **But it is more likely that we, as a community, will be denied the benefit of many of her thoughts and ideas**. 151 Again MacKinnon's analysis of how first amendment law miscon- strues pornography is instructive. She notes that in concerning them- selves only with government censorship, first amendment absolutists fail to recognize that whole segments of the population are systematically silenced by powerful private actors. "**As a result, [they] cannot grasp that the speech of some silences the speech of others in a way that is not simply a matter of competition for airtime."'**

#### Free speech limits force minorities to pay the cost for a good for society [good card!]

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “If He Hollers Let Him Go: Regulating Racist Speech on Campus.” *Duke Law Journal.* 1990. RP

**Whenever we decide that racist hate speech must be tolerated beause of the importance of tolerating unpopular speech we ask blacks and other subordinated groups to bear a burden for the good of society- to pay the price for the societal benefit of creating more room for speech. And we assign this burden to them without seeking their advice, or consent. This amounts to white domination, pure and simple**. It is taxation without representation. We must be careful that the ease with which we strike the balance against the regulation of racist speech is in no way influenced by the fact the cost will be borne by others.' **We must be certain that the individuals who pay the price are fairly represented in our deliberation, and that they are heard. Even as our discussions concerning the efficacy of regulating racist speech on campuses continue, they evidence our lack of attention to the costs of constitutional injury borne by the victims**. I have had scores of conversations about this topic over the past several months with stu- dents, colleagues, university administrators, ACLU board members, re- porters, friends, relatives, and strangers. By now there is an experience of Deja vu each time I am asked to explain how a good civil libertarian like myself-a veteran of 1960s sit-ins and demonstrations, a liberal con- stitutional law professor, and a person who has made antiestablishment speech his vocation--could advocate censorship. I try to be patient, ar- ticulate, and good-natured as I set forth the concerns and arguments ex- plored in this Article. I try to listen carefully, to remain open to others' experiences and to my own strong instincts against governmental incur- sion on individual liberty. Often when I am at my best, even the most steadfast defenders of the first amendment faith will concede that these are persuasive argu- ments. They say they agree with much of what I have said, they recog- nize I am proposing narrowly framed restrictions on only the most abusive, least substantive forms of racist speech, and they understand the importance of hearing the victims' stories. Then they say, "But I'm afraid I still come out differently from you in the end. I still don't see how we can allow even this limited regulation of racist speech without running some risk of endangering our first amendment liberties." One of these encounters occurred at a recent dinner with colleagues in New York. My good friend and former colleague john powell-john is National Legal Director of the ACLU and he is black-was in attend- ance. He told the following story: My family was having Thanksgiving dinner at the home of friends. -We are vegetarians and my two kids were trying to figure out which of the two dressings on the table was the vegetarian dressing and which was the meat dressing. One of our hosts pointed to one of the dress- ings and said, "This is the regular dressing and the other is the vegeta- rian dressing." I corrected him saying, "There is no such thing as 'regular' dressing. There is meat dressing and there is vegetarian dress- ing, but neither one of them is regular dressing." This incident reminded john of the discussions he has had with his colleagues on the subject of regulating racist speech. "Somehow," he said, I always come away from these discussions feeling that my white col- leagues think about the first amendment the way my friend thought about "regular" [meat] dressing, as an amendment for regular people or all people, and that they think of the equal protection clause of the fourteenth amendment the way my friend thought about vegetarian dressing, as a special amendment for a minority of different people. Inevitably, in these conversations, those of us who are non-white bear the burden of justification, of justifying our concern for protection under our "special" amendment. It is not enough that we have demon- strated tangible and continuing injury committed against the victims of racist speech. There can be no public remedy for our special fourteenth amendment injury until we have satisfied our interlocutors that there is no possible risk of encroachment on their first amendment-the "regu- lar" amendment.1 55 If one asks why we always begin by asking whether we can afford to fight racism rather than asking whether we can afford not to, or if one asks why my colleagues who oppose all regulation of racist speech do not feel that the burden is theirs (to justify a reading of the first amendment that requires sacrificing rights guaranteed under the equal protection clause), then one sees an example of how unconscious racism operates in the marketplace of ideas. **Well-meaning individuals who are committed to equality without regard to race, and who have demonstrated that commitment in many arenas, do not recognize where the burden of persuasion has been placed in this discussion.** When they do, they do not understand why. Even as I experienced the frustration of always bearing the burden of persuasion, I did not see the source of my frustration or understand its significance until john told his story about the Thanksgiving dressing. **Unfortunately, our unconscious racism causes us (even those of us who are the direct victims of racism), to view the first amendment as the "regular" amendment-an amendment that works for all people-and the equal protection clause and racial equality as a special-interest amendment important to groups that are less valued.1 56 Derrick Bell has noted that often in our constitutional history the rights of blacks have been sacrificed because sacrifice was believed necessary to preserve the greater interests of the whole**.157 It is not just the actual sacrifice that is racist but also the way the "whole with the greater interests" gets defined. **Today in a world committed to the ideal of equality, we rarely notice the sacrifice or how we have avoided noticing the sacrifice by defining the interests of whites as the whole**, "the regu- lar." When we think this way, when we see the potential danger of in- cursions on the first amendment but do not see existing incursions on the fourteenth amendment, our perceptions have been influenced by an en- tire belief system that makes us less sensitive to the injury experienced by non-whites. Unaware, we have adopted a world view that takes for granted black sacrifice. Professor Richard Delgado has suggested there is another way in which those of us who abhor racist speech but insist that it cannot be regulated may be, perhaps unwittingly, benefiting from the presence of "a certain amount of low grade racism" in the environment: **I believe that racist speech benefits powerful white-dominated institutions**. The highly educated, refined persons who operate the Univer- sity of Wisconsin, other universities, major corporations, would never, ever themselves utter a racial slur. That is the last thing they would do. Yet, they benefit, and on a subconscious level they know they ben- efit, from a certain amount of low-grade racism in the environment. If an occasional bigot or redneck calls one of us a nigger or spick one night late as we're on our way home from the library, that is all to the good. Please understand that I am not talking about the very heavy stuff-violence, beatings, bones in the nose. That brings out the TV cameras and the press and gives the university a black eye. I mean the daily, low-grade largely invisible stuff, the hassling, cruel remarks, and other things that would be covered by rules. **This kind of behavior keeps non-white people on edge, a little off balance.** We get these oc- casional reminders that we are different, and not really wanted. **It pre- vents us from digging in too strongly, starting to think we could really belong here.** It makes us a little introspective, a little unsure of our- selves; at the right low-grade level it prevents us from organizing on behalf of more important things. It assures that those of us of real spirit, real pride, just plain leave-all of which is quite a substantial benefit for the institution.158

### Gach

#### The Aff’s reification of the public/private distinction in education is capitalistic – this classist separation lets the rich improve their own schools the most.

**Gach:** Gach, Ethan [Contributor, Ordinary Times] “The Problem with the Public vs. Private Distinction in Education.” *Ordinary Times.* October 2013. RP

**Today,** [**Allison Benedikt**](http://www.slate.com/authors.allison_benedikt.html)**is berating parents who send their children to private schools. As she sees it, the self-serving act might make you a good parent, but it makes you a bad citizen–or at least that’s my reading of her** [**main thesis**](http://www.slate.com/articles/double_x/doublex/2013/08/private_school_vs_public_school_only_bad_people_send_their_kids_to_private.html?utm_source=tw&utm_medium=sm&utm_campaign=button_toolbar&original_referrer=http://t.co/8BtpoEs3st). It’s not entirely clear whether Benedikt thinks that a mediocre public school education is just as good as one from an expensive private school, **so I’ll focus instead on her claim that public education won’t get better until wealthier families have more skin in the game. Basically, if you want someone with power, money, and influence to take an interest in a failing public school, force their kids to go there and watch the transformation begin.** I agree in theory with where this argument is coming from. **Enclave politics and the fragmenting of public society into groups defined by race, class, and culture is no doubt responsible for some of the lack of political will when it comes to widespread public re-investment. Why care about the budget shortfalls for public transportation if not you or anyone you know uses it? What does it matter if unemployment is double digits in a community you never have to drive through**, let alone actually engage with? But situating the conflict between public and private schools is a side-show. As Michael McShane at AEI [points out](http://www.aei-ideas.org/2013/08/please-sending-your-kids-to-private-school-doesnt-make-you-a-bad-person/), “[P]ublic schools are by and large residentially assigned, the rich have their totally awesome (and essentially private due to the home price in the school’s catchment area) public schools and poor people are trapped in failing schools because they can’t move away. That’s what leads to Balkanization. You choosing to send your kids to a suburban public school does nothing for the kids in SouthEast.” Benedikt is under the illusion that engaged parents is one of the major resources that “good” schools have and “bad” ones don’t. “Parents have a lot of power,” she writes. “In many underresourced schools, it’s the aggressive PTAs that raise the money for enrichment programs and willful parents who get in the administration’s face when a teacher is falling down on the job.” Recently, parents, teachers, and students have been battling the school council, city hall, and the governor’s office over massive budget shortfalls plaguing the school district of Philadelphia. If you follow the struggle at all you can tell there are plenty of active parents who are involved and fighting for their kids’ futures. While I have no doubt that it would help, I fail to see how having the wealthy and mostly liberal elites in Rittenhouse Square send their children to one of the city’s public schools will solve the budget crisis. What would help? A lot of things no doubt, but not least of all the public resources necessary to make up for the poverty and joblessness that plagues so many of Philadelphia’s neighborhoods. To McShane’s point, Lower Merion School District on the other side of City Line is part of the public school system, yet it spends [more than twice](http://www.mainlinemedianews.com/articles/2013/04/18/main_line_times/news/doc517009ab0411c310746981.txt?viewmode=fullstory) the amount per student [that Philadelphia does](http://www.commonwealthfoundation.org/policyblog/detail/how-much-do-philadelphia-schools-spend). The issue is less about private vs. public than the class privilege that’s tied to geography. Benedikt argues that “**We need a moral adjustment, not a legislative one**,” and yet no amount of moral shaming is going to change where people live and the material condition which follow from that. The problem isn’t that the rich person next door has no stake in your child’s  education–it’s that the person next door is most likely just as poor.

### Burley

#### In the status quo, the alt-right isn’t being given the chance to speak due to students and administrators shutting down engagements.

**Burley:** Burley, Shane [Contributor, Waging Nonviolence] “How the Alt Right is trying to create a ‘safe space’ for racism on college campuses.” *Waging Nonviolence.* October 2016. RP

**While the Alt Right is fighting for a platform, many on college campuses are taking the example of groups like the One People’s Project and are rallying community pressure to disallow Alt Right speakers regular access to collegiate forums. At DePaul University, Alt Right commentator and Gays for Trump founder Milo Yiannopoulos was brought by the College Republicans. Ahead of this, a petition began circulating, largely stemming out of the Black Student Union work, to push DePaul to do more about hate speech on campus. Protesters disrupted the event by getting on stage and preventing him from speaking, functionally ending it. The college later canceled Yiannopoulos’s second scheduled speech, citing his provocative rhetoric as the reason.** Protesters later attempted to disrupt a debate-watching party where Trump student supporters had congregated to root for their candidate.

#### The alt-right exploits the idea of free speech to develop a platform.

**Burley:** Burley, Shane [Contributor, Waging Nonviolence] “How the Alt Right is trying to create a ‘safe space’ for racism on college campuses.” *Waging Nonviolence.* October 2016. RP

**A murmur began in May around Berkeley and the surrounding Bay Area as posters appeared overnight on the sides of buildings and wrapped on poles**. Adorned with images of statues of antiquity, these classical images of European men depicted as gods were intended to light a spark of memory in the mostly white faces that passed by them. With lines like “Let’s become great again” printed on them, the posters were blatant in their calls for European “pride,” clearly connecting romanticized European empires of the past to the populism of Donald Trump today. The posters were put up by Identity Europa, one of the lesser-known organizations amid that esoteric constellation of reactionary groups and figures known as the “Alt Right.” **They were part of a campaign around the country enticing college-age white people to join a new kind of white nationalist movement. While similar posters emerged elsewhere on the West Coast and Midwest, in central California they pointed toward a public event — one directed specifically toward the tradition of free speech at the University of California at Berkeley.** Shortly after the posters went up, a brief announcement came from Alt Right leader Richard Spencer and his think-tank, the National Policy Institute. They, along with Identity Europa and other white nationalist organizations, were planning to hold an “Alt Right Safe Space” in Berkeley’s Sproul Plaza on May 6. The “safe space” is a play on words for the Alt Right, using the phrase that many leftist-oriented facilities use for a code of conduct that bans oppressive or bigoted behavior. Instead, they intended to make a “safe space” for white racism, the public declaration of which has become unwelcome in most any space. The plan was to show up and publicly proselytize on the problems of multiculturalism and the need for “white identity.” Identity Europa founder Nathan Damigo joined Spencer, along with Johnny Monoxide, a podcaster and blogger from the white nationalist blog The Right Stuff, which has become popular in Internet racialist circles (racialist being a term they use, since racist carries a negative connotation) for its internal lingo and open use of racial slurs. Alt Right media outlet Red Ice Creations teamed up with Monoxide to livestream the event, bringing the white nationalist crowd together with their international audience of conspiracy theorists, anti-vaccine activists and [alternative religion](http://www.vice.com/read/how-a-thor-worshipping-religion-turned-racist-456) proponents. While live streaming to their crowd, they came ready to argue. “This guy’s anti-dialogical! He’s anti-white,” yelled Damigo when challenged on the racialist content of his talking points. For decades, both the institutional and radical left in the United States has relied on campus activism as a key part of its organizing base. **From the antiwar movement of the 1960s to the development of feminist and queer politics to the growing youth labor and Black Lives Matter movement, colleges have been a center for political encounters and mobilizations. The radicalization of students has often leaned to the left because the left’s challenges to systems of power seem like a perfect fit for people expanding their understanding of the world. Amid major shifts in U.S. politics, a space has opened for revolutionary right-wing politics that have not traditionally been accessible to those outside of the most extreme ranks of the white nationalist movement**. Today, the Alt Right is repackaging many of the ideas normally associated with neo-Nazis and KKK members into a new, more middle-class culture by using the strategies and language traditionally associated with the left. This means a heavy focus on argumentation and academic legitimacy, as well as targeting campus locations (and millennials) for recruitment. Until Hillary Clinton’s August 21 speech, most people had never heard of the Alt Right. However, it is a movement that has been growing for almost a decade in backroom conferences and racially-charged blogs. It is a kind of cultural fascism, one birthed out of the post-war fascist movements of Europe and given character by a culture of Twitter trolls and populist American anger. Yet, when it appears on campus, the Alt Right’s recruiting is hardly different from the Klan’s attempts to openly recruit members by leaving bags of leaflets and candy at people’s doorsteps. While the Alt Right Safe Space was put together as a joint effort with several nationalist organizations, Identity Europa emphasizes focusing on the youth most of all. The name and branding of Identity Europa are new, but the organization was started years ago as the National Youth Front. Nathan Damigo was an Iraq war veteran going to school at the University of California at Stanislaus when he took over the organization, shifting its ideological orientation from “civic nationalism” to “race realism,” the notion that whites have higher average IQ’s and a smaller propensity for crime than blacks. While Damigo notes that they have a “don’t ask, don’t tell” policy when it comes to gay members, he said that bi-racial and transgendered people would be turned away. For Damigo and others who trade in white nationalist talking points like “race realism,” the differences between races are significant. “Ethnic and racial or religious diversity can actually wreak havoc on a social system, and cause tons of problems,” Damigo said. “I do believe that there are differences between human populations … [T]he distribution of genes that affect behavior and intelligence are already known to not be equally distributed between all populations.” Identity Europa then represents a sort of “fraternal organization” where “European-descended” people can meet and network, working their way towards a kind of campus activism that challenges discourse and educational plans embedded with multiculturalism and egalitarianism. Such organizations have a long history on the right, stretching back to the 19th century fencing clubs and fraternities that popularized the pan-German ideas of Georg Schönerer — an immediate influence on Nazism. As organizers, however, Identity Europa do not follow the standard playbook for campus activism, which usually involves breaking broad political ideas into organized demands with reachable goals. Instead, they simply want to cultivate a subculture whose constituents will intervene in public discourse, thereby seeding their well-rehearsed talking points about racial inequality, white sovereignty and the return to heteronormative social roles. While Damigo brags about the growth of Identity Europa, it likely does not have membership beyond a few dozen people on campuses around the country at this point. However, there are reports of Identity Europa posters appearing at different places around the country almost weekly. Through its brand of social interruption, Identity Europa intends to foment a revolutionary right-wing culture — precisely the goal shared by Richard Spencer and his National Policy Institute. Spencer has been in right-wing politics for years, first joining as an assistant editor at the *American Conservative* after an article he published on the Duke Lacrosse sexual assault scandal made him a minor star. He later went to the controversial *Taki’s Magazine*, known for giving a voice to the shrinking paleoconservative movement and staffing dissident voices from the right who are regularly accused of racism. As he further cemented himself in this “dissident right” world, he developed the term “Alternative Right” to indicate the different strands that he saw uniting against multiculturalism, equality and American democracy. It was in this climate that Spencer founded the website Alternative Right, giving voice to a growing white nationalist movement that built on fascist intellectual traditions in Western Europe and challenged the right-wing connection to the American conservative movement. He eventually went on to take over the white nationalist think-tank, the National Policy Institute, or NPI, originally founded by William Regnery, using money inherited from the conservative publishing house, Regnery Publishing. The organization was meant to center on Samuel Francis, a former columnist with the *Washington Times* who was let go as he shifted further into white nationalism and associated with racialist organizations like American Renaissance and the Council of Conservative Citizens. Spencer took over the organization after Francis’s death, molding it into the intellectual core of the growing Alt Right movement. Spencer’s goal has always been the creation of a “meta-political” movement rather than one founded on contemporary political wedge issues. He hopes to draw together ideas like “white identitarianism” — a term used to brand the movement as being about European heritage — and the eugenics-invoking “human biodiversity.” Both are terms fostered by the so-called “European New Right” and its leading ideologues. What immediately distinguished Spencer’s role in the white nationalist movement from the older generation was his explicit focus on millennial outreach. For instance, his expensive NPI conferences are dramatically discounted for those under 30, and his new *Radix Journal* is marketed directly to an Internet culture of disaffected and angry white youths. He was an early proponent of podcasts as a main voice of the movement, a move that has given the Alt Right its conversational tone and made its ideas more accessible. **With Damigo, Spencer developed the Alt Right Safe Space idea to exploit the projection of free speech on college campuses, despite the movement’s general rejection of human rights. “I think it’s symbolic as a way of saying, ‘we’re here,’” Spencer explained.**

### Horwitz

#### Granting differential treatment based on a public/private distinction reifies capitalist divisions.

**Horwitz:** Horwitz, Morton J. [Professor of Law, Harvard University. A.B. 1959, College of the City of New York; Ph.D. 1964, LL.B. 1967, Harvard University. Member, Massachusetts Bar.] “The History of the Public/Private Distinction.” *University of Pennsylvania Law Review.* 1982. RP

**By 1940, it was a sign of legal sophistication to understand the arbitrariness of the division of law into public and private realms. No advanced legal thinker of that period, I am certain, would have predicted that forty years later the public/private dichotomy would still be alive and, if anything, growing in influence**. What accounts for its surprising vitality? Until World War II, twentieth-century progressivism empha- sized the role of the state in creating institutions that would pro- mote a public interest. In reaction to the spread of totalitarian- ism, progressivism after World War II capitulated to the argument that any substantive conception of the public interest was simply the first step on the road to totalitarianism. **The idea of a public interest thus came to be formulated in the purely proceduralist terms of interest-group pluralism-simply as whatever was the out- come of competition among interest groups. This was, it should be emphasized, a twentieth-century return to a market theory of the public interest**-but this time the competitors were groups and the market was the political process. **Earlier, progressivism posited a sharp conflict between a sub- stantive public interest and private self-interest, and regarded a primary function of the state as creating institutions that would transcend private self-interest. Unless the individualism and self- ishness that was part of the culture of capitalism could be moder- ated, they believed, the system could not survive**. Most of the Legal Realists operated out of this political paradigm and understood their task to be the moderation and limitation of private greed and domination. But once the idea of a substantive public interest began to confront ridicule after World War II, the function of the state came to be redefined as simply a reflection of the sum of the vectors of private conflict. Private self-interest, which under the progres- sive program was to be kept suspiciously in check, once again be- came the only legitimate political reality, and the idea of an au- tonomous public realm began correspondingly to sink into oblivion. The recent revival of natural-rights individualism in legal and political theory is a symptom of the collapse of a belief in a distinc- tively public realm standing above private self-interest. **It is not only a dangerous symptom of the unravelling of all sense of community, but also a relapse into a predatory and vicious conception of politics.** Yet reality has a funny way of intruding upon theory. The public/private distinction could approximate the actual arrange- ment of legal and political institutions only in a society and. econ- omy of relatively small, decentralized, nongovernmental units. Private power began to become increasingly indistinguishable from public power precisely at the moment, late in the nineteenth. century, when large-scale corporate concentration became the norm. **The attack on the public/private distinction was the result of a widespread perception that so-called private institutions were ac- quiring coercive power that had formerly been reserved to govern- ments**. The contemporary erosion of the public/private distinction in many areas of legal doctrine described by Professor Stone 20 is but another symptom of the passing of that world of nineteenth-century decentralized competitive capitalism that once made that distinction a rough approximation of reality.

### Morley

#### The idea of a free and independent press is a myth propagated by capitalism – they just sell out to advertisers and big money.

**Morley:** Morley, Daniel [Contributor, In Defense of Marxism] “Our Cherished Freedom of Speech Myth.” *In Defense of Marxism.* February 2015. RP

**On February 17th Peter Oborne, one of the UK's most respected journalists, resigned from the Daily Telegraph and publicly condemned its practice of placing advertisers interests above those of the truth. As a conservative liberal, Peter Oborne is concerned that our famed and cherished 'freedom of speech' is being undermined by business interests.** Freedom of expression is routinely and uncritically heralded as our society's proudest achievement to be defended at all costs. **It is always assumed that, essentially, we possess this freedom, and it is only necessary to preserve it in one way or another. In truth, under capitalism there is no such thing as free expression nor a free press, for capital decides everything**. “There is no such thing, at this date of the world's history, as an independent press. You know it and I know it. **There is not one of you who dares to write your honest opinions, and if you did, you know beforehand that it would never appear in print.** I am paid weekly for keeping my honest opinions out of the paper I am connected with. Others of you are paid similar salaries for similar things, and any of you who would be so foolish as to write honest opinions would be out on the streets looking for another job. “**If I allowed my honest opinions to appear in one issue of my paper, before twenty-four hours my occupation would be gone. The business of the journalist is to destroy the truth; to lie outright; to pervert; to vilify; to fawn at the feet of mammon, and to sell the country for his daily bread.** You know it and I know it and what folly is this toasting an independent press. We are the tools and vassals of the rich men behind the scenes. **We are the jumping jacks, they pull the strings and we dance. Our talents, our possibilities and our lives are all the property of other men. We are intellectual prostitutes.”**

#### The alternative is a recognition that freedom of speech is impossible, and that because of capitalism speech can never be truly liberated.

**Morley:** Morley, Daniel [Contributor, In Defense of Marxism] “Our Cherished Freedom of Speech Myth.” *In Defense of Marxism.* February 2015. RP

**In our society, there is no true freedom of speech, for it is a freedom only for those who command massive resources**. Freedom in the lives of the majority is fleeting, illusory and a cruel irony - the freedom to consume what media the capitalists have deemed important or profitable, and the freedom to be exploited, whether as industrial workers, journalists or struggling musicians. **A lucky few break through the tiny cracks in the system and these are held up as ‘proof’ of the freedom of the majority. It follows that the only way to create a truly free society, one in which the majority have equal access to the facilities of the media and in which culture is produced for the sake of genuine human expression, whatever form that may take, is to treat all these facilities - newspapers, TV stations, websites, music venues and the education system - as social goods freely available to all and under the democratic control of the masses**. But not only that. The enormous power of the ruling class stems primarily not from its ownership of the airwaves, but its control over production in general. **The long working hours, the general condition of relying on the capitalists for employment so that we may live, and all the social insecurity this creates, inhibits our creativity and confidence, it impoverishes us literally and spiritually. In these conditions, there can be no talk of real freedom of expression. The expropriation of the media empires under democratic workers control as part of a general plan of production to meet social need - that is the demand of those who fight for real freedom of expression!**

### Sculos and Walh

#### Complete freedom of speech cuts against student protesters – they become flooded with the ideas from the capitalistic right.

**Sculos and Walsh**: Sculos, Bryant William [ Department of Politics and International Relations, Florida International University] , and Sean Noah Walsh [Department of Political Science and Economics, Capital University]. "The Counterrevolutionary Campus: Herbert Marcuse and the Suppression of Student Protest Movements." New Political Science (2016): 1-17.

But what, precisely, have the students in these cases done? They have protested, sometimes¶ loudly. In a case Chait points to as emblematic of left-wing intolerance, they left messages¶ at the door of a conservative columnist on the campus of the University of Michigan.51¶ In a case Friedersdorf labeled ‘flagrant intolerance’, students called for the revocation of¶ campus housing for two faculty members.52 In every case that has been maligned as leftist¶ intolerance, the students have been guilty of speaking, protesting or expressing themselves,¶ usually against Establishment figures such as Rice or Lagarde, promoters of racist policy such¶ as Kelly, or directly against unjust policies. Demonstrations and disruptions did nothing to¶ prevent Rice, Lagarde, Kelly or others from speaking. They were free to speak, and free to be¶ spoken to, had they the courage. In every case, the Establishment figures elected to withdraw¶ from their respective invitations.¶ Claims that leftist students are intolerant, in fact, betray intolerance against the voice of¶ the leftist students, as though they ought to recognize themselves as subordinate, and¶ passively listen to their superiors. Calls for student protestors on the left to become more¶ tolerant are tantamount then to calling for their silent compliance. Rice, Lagarde and Kelly¶ wish to speak. So do the student protestors. The core issue is not really tolerance; it is obedience¶ hidden behind a repressive demand for ‘toleration’. The students at Rutgers, and¶ beyond, know full well what Condoleezza Rice represents; they simply have no need to hear¶ it again. To reiterate, Marcuse argued liberating intolerance would proceed by the use of¶ ‘extralegal means’:¶ Tolerance would be restricted with respect to movement of a demonstrably aggressive or¶ destructive character (destructive of the prospects for peace, justice, and freedom for all). Such¶ discrimination would also be applied to movements opposing the extension of social legislation¶ to the poor, weak, disabled….To tolerate propaganda for inhumanity vitiates the goals not only¶ of liberalism but of every progressive political philosophy.53¶ Why should the students, or anyone else for that matter, tolerate speech by Condoleezza¶ Rice, an architect of volitional war? Why should they restrain their voices of dissent against¶ Christine Lagarde, when the International Monetary Fund manages wealth for transnational¶ capitalism? Why should they sit in silence as Raymond Kelly makes the case for policies¶ targeting African-Americans, Latinos and Muslims? What case is there to be made from¶ someone who should probably stand trial at the International Criminal Court? In that sense,¶ leftist students are not so much being asked to let others speak. Rather, they are being¶ instructed to listen passively, listen to views they already understand are noxious. Students organizing and protesting against the broader terrain of oppression, such as¶ the Israeli occupation of Palestinian territories, have been subject to egregious official silencing¶ by universities across the United States.54 Relying on the strategy of disinvestment, which¶ was successfully deployed against the apartheid regime of South Africa beginning in the¶ 1970s, leftist university students have been at the forefront of what has become known as¶ BDS: calling on universities to boycott, divest and sanction, to effectively disengage from¶ and isolate Israel until it ends its fifty-year occupation of Palestinian land. While supporters¶ represent diverse backgrounds, ‘the BDS movement is anti-Semitic at its very core’, according¶ to Abraham Foxman of the Anti-Defamation League.55 Charles Krauthammer dismissed the¶ movement as ‘an exercise in radical chic….with a dose of edgy anti-Semitism’.56 A group of¶ sixty Black representatives from the Democratic Party signed an open letter calling the critique¶ of the Israeli occupation, especially as represented by BDS, an example of ‘anti-Semitism’.57¶ Addressing the Columbia Center for Law and Liberty, former president of Harvard¶ University and Obama Administration Treasury Secretary Lawrence Summers called BDS ‘a¶ consequential abdication of moral responsibility’ and ‘anti-Semitic in their effect if not their¶ intent’.58 This labeling should be interpreted, as it was designed by its authors to function,¶ as an attempt to silence those calling for equality of treatment for all peoples. After all, who¶ wants to be labeled anti-Semitic? Indeed, anti-Semitism sits at the zenith of intolerances.¶ Charged with this excoriating epithet, supporters of BDS would have to spend time responding¶ to the accusation, or mute if not outright abandon the strategy altogether. As with BLM,¶ students in support of BDS are struck with accusations of intolerance in order to facilitate¶ their silence. Repressive tolerance is a powerful tool for disrupting leftist movements.¶ The demand for university students on the Left to become more tolerant is not a call for¶ the inclusion of additional points of view. It is, instead, a call to silence, a call for exclusion¶ of the students’ systemic critique, and effort to disrupt localized refusals before they can¶ coalesce into a Great Refusal. ‘Tolerance’ of other views is paid for by silencing student voices.¶ It is a rather dialectical conversion of tolerance to its other—intolerance in the guise of greater¶ inclusivity. Precisely, then, because it perverts the idea of liberty into another form of domination,¶ repressive tolerance has become another instrument of counterrevolution. Marcuse¶ expressed consternation over threats to the cohesiveness of the New Left, observing that it¶ had been ‘weakened to a dangerous degree’ by tactics that had amplified internal fragmentation¶ and enhanced ‘ideological conflicts within the militant opposition and the lack of¶ organization’.59 The silence following from repressive tolerance disrupts the intellectual coalescence¶ of the Great Refusal, stifles reason and neutralizes dissent before it can even begin.¶ As Marcuse admonished, ‘Thus, within a repressive society, even progressive movements threaten to turn into their opposite to the degree to which they accept the rules of the¶ game’.60 Sit quietly, listen and be tolerant: that is the refrain of the Establishment. Repressive¶ tolerance is not a force for merely stupefying the population. With renewed discontent on¶ college campuses, it has become a means to undermine the dissent of the educated, a means¶ to prevent an organized, unified questioning of the Establishment and its system, a tactic¶ of the counterrevolution.

### Brown

#### The promotion of free speech reifies the notion that speech is something that can be commodified – it analogies speech to capital in a neutral marketplace.

**Brown:** Brown, Wendy **“**Undoing the demos: Neoliberalism's stealth revolution. *MIT Press,* 2015.

At times, kennedy raises the pitch in Citizens United to depict limits on corporate funding of PAC ads as “an outright ban on speech”;19 at other times, he casts them merely as inappropriate government inter- vention and bureaucratic weightiness.20 But beneath all the hyperbole about government’s chilling of corporate speech is a crucial rhetorical move: the figuring of speech as analogous to capital in “the political marketplace.” on the one hand, **government intervention is featured throughout the opinion as harmful to the marketplace of ideas that speech generates.21 Government restrictions damage freedom of speech just as they damage all freedoms. on the other hand, the unfettered accumulation and circulation of speech is cast as an unqual- ified good, essential to “the right of citizens to inquire...hear... speak...and use information to reach consensus** [itself] a precondi- tion to enlightened self-government and a necessary means to protect it.”22 not merely corporate rights, then, but **democracy as a whole is at stake in the move to deregulate speech.** Importantly, h**owever, democ- racy is here conceived as a marketplace whose goods—ideas, opinions, and ultimately, votes—are generated by speech, just as the economic market features goods generated by capital.** In other words, at the very moment that Justice kennedy deems disproportionate wealth irrele- vant to the equal rights exercised in this marketplace and the utili- tarian maximization these rights generate, **speech itself acquires the status of capital, and a premium is placed on its unrestricted sources and unimpeded flow.¶ What is significant about rendering speech as capital? economiza- tion of the political occurs not through the mere application of market principles to nonmarket fields, but through the conversion of political processes, subjects, categories, and principles to economic ones**. This is the conversion that occurs on every page of the kennedy opinion. **If everything in the world is a market, and neoliberal markets con- sist only of competing capitals large and small, and speech is the capital of the electoral market, then speech will necessarily share cap- ital’s attributes: it appreciates through calculated investment, and it advances the position of its bearer or owner.** Put the other way around, once speech is rendered as the capital of the electoral marketplace, i**t is appropriately unrestricted and unregulated, fungible across actors and venues, and existing solely for the advancement or enhancement of its bearer’s interests.** The classic associations of political speech with freedom, conscience, deliberation, and persuasion are nowhere in sight.¶ How, precisely, is speech capital in the kennedy opinion? How does it come to be figured in economic terms where its regulation or restriction appears as bad for its particular marketplace and where its monopolization by corporations appears as that which is good for all? The transmogrification of speech into capital occurs on a number of levels in kennedy’s account. **First, speech is like capital in its tendency to proliferate and circu- late, to push past barriers, to circumvent laws and other restrictions, indeed, to spite efforts at intervention or suppression**.23 s**peech is thus rendered as a force both natural and good, one that can be wrongly impeded and encumbered, but never quashed.¶ second, persons are not merely producers, but consumers of speech, and government interference is a menace**—wrong in prin- ciple and harmful in effect—at both ends. The marketplace of ideas, kennedy repeats tirelessly, is what decides the value of speech claims. every citizen must judge the content of speech for himself or herself; it cannot be a matter for government determination, just as govern- ment should not usurp other consumer choices.24 In this discussion, kennedy makes no mention of shared deliberation or judgment in politics or of voices that are unfunded and relatively powerless. He is focused on the wrong of government “command[ing] where a per- son may get his or her information or what distrusted source he or she may not hear, [using] censorship to control thought.”25 **If speech generates goods consumed according to individual choice, govern- ment distorts this market by “banning the political speech of millions of associations of citizens**” (that is, corporations) and by paternal- istically limiting what consumers may know or consider. Again, **if speech is the capital of the political marketplace, then we are polit- ically free when it circulates freely. And it circulates freely only when corporations are not restricted in what speech they may fund or promulgate.**¶ Third, kennedy casts speech not as a medium for expression or dialogue, but rather as innovative and productive, just as capital is. There is “a creative dynamic inherent in the concept of free expres- sion” that intersects in a lively way with “rapid changes in technol- ogy” to generate the public good.26 This aspect of speech, kennedy argues, specifically “counsel[s] against upholding a law that restricts political speech in certain media or by certain speakers.”27 Again, the dynamism, innovativeness, and generativity of speech, like that of all capital, is dampened by government intervention. **Fourth, and perhaps most important in establishing speech as the capital of the electoral marketplace, kennedy sets the power of speech and the power of government in direct and zero-sum-game opposition to one another**. Repeatedly across the lengthy opinion for the majority, he identifies speech with freedom and government with control, cen- sorship, paternalism, and repression.28 When free speech and govern- ment meet, it is to contest one another: the right of speech enshrined in the First Amendment, he argues, is “premised on mistrust of gov- ernmental power” and is “an essential mechanism of democracy [because] it is the means to hold officials accountable to the people.”29 Here are other variations on this theme in the opinion:¶ The First Amendment was certainly not understood [by the framers] to condone the suppression of political speech in society’s most salient media. It was understood as a response to the repression of speech.30¶ When Government seeks to use its full power, including criminal law, to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought.... The First Amendment confirms the freedom to think for ourselves.31 **This reading of the First Amendment and of the purpose of political speech positions government and speech as warring forces parallel to those of government and capital in a neoliberal economy.**

### Smith

#### Hate speech causes physical and emotional violence to victims.

**Smith:** Smith, Craig R. [Craig R. Smith is Professor of Communication Studies and Director of the Center for First Amendment Studies at California State University, Long Beach. See his newest book, *The Four Freedoms of the First Amendment* (Waveland Press, 2004)] “CIRCUMVENTING THE "TRUE THREAT" STANDARD IN CAMPUS HATE SPEECH CODES.” *The Center for First Amendment Studies.* 2013. RP

**Hate speech is a pervasive problem suffered particularly by ethnic and sexual minorities. It can undermine self-esteem, cause isolation, and result in violence. Words can be damaging and the damage can be heightened by emotion and other contextual factors.** Unfortunately, hate crimes are the on rise. According to FBI figures released on November 22, 2004, hate crimes rose from 7,462 in 2002 to 7,489 in 2003. Half of these crimes targeted racial groups; 2,548 against Blacks, 830 against whites, 231 against Asians. Religious intolerance was the cause of 1,343 crimes, and of these, 927 targeted Jews. Attacks based on sexual orientation amounted to 1,239 cases. Words can reinforce and/or maintain social inequality in the home, in the classroom, in the workplace, and in social settings. **Hate messages are real and immediate for victims. In her article in the *Miami Law Review*, Professor Patricia Williams called hate messages "spirit murder." According to research completed by professors Kitano and Allport, the effects of hate speech include displaced aggression, avoidance, retreat, withdrawal, alcoholism, and suicide.** The special report of the Attorney General of California [1988] demonstrates that epithets and harassment "often cause deep emotional scarring and bring feelings of intimidation and fear that pervade every aspect of a victim's life." In his book *Words that Wound*, Professor Delgado demonstrates that hate speech victims suffer high blood pressure and loss of self-worth. In the *Journal of Social Psychiatry*, Professor Hafner demonstrates that psychological disturbances including headaches, social withdrawal, depression, and anxiety attacks result from working or learning in a hostile environment. **Other reports clearly demonstrate that hate speech results in feelings of ethnic or gender inferiority**. In the *Journal of Experimental Sociology* (1985), Greenberg and Pysczynski [Piszynski] demonstrate that overhearing a racist slur causes the listener to evaluate members of the slurred group more harshly in the future. Hostile environments trigger avoidance strategies that limit personal freedom and have serious economic consequences. **Students who are victims of hate speech often avoid classes and other places of hate speech such as food courts and libraries. Their grades then suffer along with their socialization into a healthy diverse community.** According to Lieberson, *Stereotypes: The Consequences for Race and Ethnic Interaction* in Marrett & Leggon, eds (1985) *Research on Race and Ethnic Relations*).

### Liptak

#### Empirics confirm that limits on hate speech do work – Europe and Canada prove deterrence and legal action are taken.

**Liptak:** Liptak, Adam [Contributor, The New York Times] “Hate speech or free speech? What much of West bans is protected in U.S.” *The New York Times.* June 2008. RP

VANCOUVER, British Columbia — **A couple of years ago, a Canadian magazine published an article arguing that the rise of Islam threatened Western values**. The article's tone was mocking and biting, but it said nothing that conservative magazines and blogs in the United States did not say every day without fear of legal reprisal. **Things are different here. The magazine is on trial. Under Canadian law, there is a serious argument that the article contained hate speech and that its publisher, Maclean's magazi**ne, the nation's leading newsweekly, should be forbidden from saying similar things, forced to publish a rebuttal and made to compensate Muslims for injuring their "dignity, feelings and self respect." The British Columbia Human Rights Tribunal, which held five days of hearings on those questions in Vancouver last week, will soon rule on whether Maclean's violated a provincial hate speech law by stirring up animosity toward Muslims. As spectators lined up for the afternoon session last week, an argument broke out. "It's hate speech!" yelled one man. "It's free speech!" yelled another. In the United States, that debate has been settled. Under the First Amendment, newspapers and magazines can say what they like about minority groups and religions - even false, provocative or hateful things - without legal consequence. The Maclean's article, "The Future Belongs to Islam," was an excerpt from a book by Mark Steyn called "America Alone." **The title was fitting: The United States, in its treatment of hate speech, as in so many areas of the law, takes a distinctive legal path. "In much of the developed world,** one uses racial epithets at one's legal peril**, one displays Nazi regalia and the other trappings of ethnic hatred at significant legal risk and one urges discrimination against religious minorities under threat of fine or imprisonment**," Frederick Schauer, a professor at the John F. Kennedy School of Government at Harvard, wrote in a recent essay called "The Exceptional First Amendment." "**But in the United States," Schauer continued, "all such speech remains constitutionally protected." Canada, Britain, France, Germany, the Netherlands, South Africa, Australia and India all have laws or have signed international conventions banning hate speech. Israel and France forbid the sale of Nazi items like swastikas and flags. It is a crime to deny the Holocaust in Canada, Germany and France. Last week, the actress Brigitte Bardot, an animal rights activist, was fined €15,000, or $23,000, in France for provoking racial hatred by criticizing a Muslim ceremony involving the slaughter of sheep. By contrast, U.S. courts would not stop the American Nazi Party from marching** in Skokie, Illinois, in 1977, though the march was deeply distressing to the many Holocaust survivors there. Si**x years later, a state court judge in New York dismissed a libel case brought** by several Puerto Rican groups against a business executive who had called food stamps "basically a Puerto Rican program." The First Amendment, Justice Eve Preminger wrote, does not allow even false statements about racial or ethnic groups to be suppressed or punished just because they may increase "the general level of prejudice." Some prominent legal scholars say the United States should reconsider its position on hate speech. "It is not clear to me that the Europeans are mistaken," Jeremy Waldron, a legal philosopher, wrote in The New York Review of Books last month, "when they say that a liberal democracy must take affirmative responsibility for protecting the atmosphere of mutual respect against certain forms of vicious attack." Waldron was reviewing "Freedom for the Thought That We Hate: A Biography of the First Amendment" by Anthony Lewis, the former New York Times columnist. Lewis has been critical of attempts to use the law to limit hate speech. **But even Lewis, a liberal, wrote in his book that he was inclined to relax some of the most stringent First Amendment protections "in an age when words have inspired acts of mass murder and terrorism.**" In particular, he called for a re-examination of the Supreme Court's insistence that there is only one justification for making incitement a criminal offense: the likelihood of imminent violence. The imminence requirement sets a high hurdle. Mere advocacy of violence, terrorism or the overthrow of the government is not enough; the words must be meant to, and be likely to, produce violence or lawlessness right away. A fiery speech urging an angry racist mob immediately to assault a black man in its midst probably qualifies as incitement under the First Amendment. A magazine article - or any publication - aimed at stirring up racial hatred surely does not. Lewis wrote that there is "genuinely dangerous" speech that does not meet the imminence requirement. "I think we should be able to punish speech that urges terrorist violence to an audience, some of whose members are ready to act on the urging," Lewis wrote. "That is imminence enough." Harvey Silverglate, a civil liberties lawyer in Boston, disagreed. "When times are tough," he said, "there seems to be a tendency to say there is too much freedom." "Free speech matters because it works," Silverglate continued. Scrutiny and debate are more effective ways of combating hate speech than censorship, he said, and all the more so in the post-Sept. 11 era. "The world didn't suffer because too many people read 'Mein Kampf,"' Silverglate said. "Sending Hitler on a speaking tour of the United States would have been quite a good idea." Silverglate seemed to be echoing the words of Justice Oliver Wendell Holmes, whose 1919 dissent in Abrams v. United States eventually formed the basis for modern First Amendment law. "The best test of truth is the power of the thought to get itself accepted in the competition of the market," Holmes wrote. "I think that we should be eternally vigilant," he added, "against attempts to check the expression of opinions that we loathe and believe to be fraught with death." The First Amendment is not, of course, absolute. The Supreme Court has said that the government may ban fighting words or threats. Punishments may be enhanced for violent crimes prompted by race hate. And private institutions, including universities and employers, are not subject to the First Amendment, which restricts only government activities. But merely saying hateful things about minority groups, even with the intent to cause their members distress and to generate contempt and loathing, is protected by the First Amendment. In 1969, for instance, the Supreme Court unanimously overturned the conviction of a leader of a Ku Klux Klan group under an Ohio statute that banned the advocacy of terrorism. The Klan leader, Clarence Brandenburg, had urged his followers at a rally to "send the Jews back to Israel," to "bury" blacks, though he did not call them that, and to consider "revengeance" against politicians and judges who were unsympathetic to whites. Only Klan members and journalists were present. Because Brandenburg's words fell short of calling for immediate violence in a setting where such violence was likely, the Supreme Court ruled that he could not be prosecuted for incitement. In his opening statement in the Canadian magazine case, a lawyer representing the Muslim plaintiffs aggrieved by the Maclean's article pleaded with a three-member panel of the tribunal to declare that the article subjected his clients to "hatred and ridicule" and to force the magazine to publish a response. "You are the only thing between racist, hateful, contemptuous Islamophobic and irresponsible journalism," the lawyer, Faisal Joseph, told the tribunal, "and law-abiding Canadian citizens." In response, a lawyer for Maclean's all but called the proceeding a sham. "Innocent intent is not a defense," the lawyer, Roger McConchie, said, in a bitter criticism of the British Columbia hate speech law. "Nor is truth. Nor is fair comment on true facts. Publication in the public interest and for the public benefit is not a defense. Opinion expressed in good faith is not a defense. Responsible journalism is not a defense." Jason Gratl, a lawyer for the British Columbia Civil Liberties Association, which has intervened in the case, was measured in his criticism of the law forbidding hate speech. "Canadians do not have a cast-iron stomach for offensive speech," Gratl said in a telephone interview. "We don't subscribe to a marketplace of ideas. Americans as a whole are more tough-minded and more prepared for verbal combat." **Many foreign courts have respectfully considered the U.S. approach - and then rejected it.** A 1990 decision from the Canadian Supreme Court, for instance, upheld the criminal conviction of James Keegstra for "unlawfully promoting hatred against an identifiable group by communicating anti-Semitic statements." Keegstra, a teacher, had told his students that Jews are "money loving," "power hungry" and "treacherous." Writing for the majority, Chief Justice Robert Dickson said there was an issue "crucial to the disposition of this appeal: the relationship between Canadian and American approaches to the constitutional protection of free expression, most notably in the realm of hate propaganda." Dickson said, "There is much to be learned from First Amendment jurisprudence." But he concluded that "the international commitment to eradicate hate propaganda and, most importantly, the special role given equality and multiculturalism in the Canadian Constitution necessitate a departure from the view, reasonably prevalent in America at present, that the suppression of hate propaganda is incompatible with the guarantee of free expression." The distinctive U.S. approach to free speech, legal scholars say, has many causes. It is partly rooted in an individualistic view of the world. Fear of allowing the government to decide what speech is acceptable plays a role. So does history. "**It would be really hard to criticize Israel, Austria, Germany and South Africa, given their histories," for laws banning hate speech**, said Schauer, the professor at Harvard, in an interview. In Canada, however, the laws seem to stem from a desire to promote societal harmony. Three time zones east of British Columbia, the Ontario Human Rights Commission - while declining to hear a separate case against Maclean's - nonetheless condemned the article. "In Canada, the right to freedom of expression is not absolute, nor should it be," the commission's statement said. "By portraying Muslims as all sharing the same negative characteristics, including being a threat to 'the West,' this explicit expression of Islamophobia further perpetuates and promotes prejudice toward Muslims and others." British Columbia human rights law, unlike that in Ontario, does appear to allow claims based on statements published in magazines. Steyn, the author of the Maclean's article, said the court proceeding illustrated some important distinctions. "The problem with so-called hate speech laws is that they're not about facts," he said in a telephone interview. "They're about feelings." "What we're learning here is really the bedrock difference between the United States and the countries that are in a broad sense its legal cousins," Steyn added. "Western governments are becoming increasingly comfortable with the regulation of opinion. The First Amendment really does distinguish the U.S., not just from Canada but from the rest of the Western world."

### ACLU Hate Speech

#### Barely any hate speech isnt constitutionally protected.

**The ACLU:** The American Civil Liberties Union [Organization that sues for justice and writes about the law] “Hate Speech on Campus.” *ACLU.* 2016. RP

A: **The U.S. Supreme Court did rule in 1942, in a case called Chaplinsky v. New Hampshire, that intimidating speech directed at a specific individual in a face- to-face confrontation amounts to "fighting words," and that the person engaging in such speech can be punished** if "by their very utterance [the words] inflict injury or tend to incite an immediate breach of the peace." Say, a white student stops a black student on campus and utters a racial slur. In that one-on- one confrontation, which could easily come to blows, the offending student could be disciplined under the "fighting words" doctrine for racial harassment. **Over the past 50 years, however, the Court hasn't found the "fighting words" doctrine applicable in** any **of the hate speech cases that have come before it, since the incidents involved didn't meet the narrow criteria stated above.** Ignoring that history, the folks who advocate campus speech codes try to stretch the doctrine's application to fit words or symbols that cause discomfort, offense or emotional pain.

### Fang

#### Free speech will ONLY BE USED BY THE WHITE MAJORITY – blacks fear hate speech and will stay home

**Fang:** Fang, Marina [Contributor, The Huffington Post] “Most College Students Want Free Speech on Campuses – But Not When It’s Hate Speech.” *Huffington Post.* April 2016. RP

**But students understand the limitations of free speech policies, especially with regard to discriminatory and offensive rhetoric. In recent months, many students of color have called on their college administrators to more fully address racism on campuses**, arguing that their campuses do not promote openness and diversity**. “Students do appear to distinguish controversial views from what they see as hate speech — and they believe colleges should be allowed to establish policies restricting language and certain behavior that are intentionally offensive to certain groups**,” the survey’s organizers wrote. Yet about 54 percent of students said that “the climate on campus prevents some people from saying what they believe because others might find it offensive.” Gallup, in collaboration with the Knight Foundation and the Newseum Institute, surveyed 3,000 students between the ages of 18 and 24 attending four-year colleges and universities in the United States. Amid a wave of incidents involving free speech and protests on college campuses, the survey’s organizers sought to gather students’ opinions about the First Amendment. **The survey noted that race plays a particular role in college students’ perceptions of First Amendment freedoms. For example, only 39 percent of the black students in the survey reported feeling less confident in the right to peacefully assemble, compared to 70 percent of white students. S**tudents are highly distrustful of the press. Nearly 60 percent of the students surveyed “have little or no trust in the press to report the news accurately and fairly,” and many expressed mixed opinions about the media’s coverage of campus protests. While the vast majority of students surveyed said that the press should generally have unrestricted access to campus protests, close to half said that in some cases, there can be reasons to bar the press, like if protesters think that the reporter may be biased, or whether “the people at the protest say they have a right to be left alone.” **The survey indicated that students are also concerned about the use of social media, with many noting that they feel that it can lead to uncivil and hateful discussions and that it can be easy to express opinions anonymously.** For example, Yik Yak, a popular social network on college campuses, allows anonymous postings. Many college students have reported seeing hateful Yik Yak posts, increasing pressure on the company to crack down on people who use the app to harass others.

#### Students don’t even want student newspapers – they misinform.

**Fang:** Fang, Marina [Contributor, The Huffington Post] “Most College Students Want Free Speech on Campuses – But Not When It’s Hate Speech.” *Huffington Post.* April 2016. RP

The survey noted that race plays a particular role in college students’ perceptions of First Amendment freedoms. For example, only 39 percent of the black students in the survey reported feeling less confident in the right to peacefully assemble, compared to 70 percent of white students. **Students are highly distrustful of the press. Nearly 60 percent of the students surveyed “have little or no trust in the press to report the news accurately and fairly,” and many expressed mixed opinions about the media’s coverage of campus protests. While the vast majority of students surveyed said that the press should generally have unrestricted access to campus protests, close to half said that in some cases, there can be reasons to bar the press, like if protesters think that the reporter may be biased, or whether “the people at the protest say they have a right to be left alone.”**

### Ross

#### Free speech on campus is a convenient excuse for racists to mirror historical patterns of lynching and assault on Blacks across the US.

**Ross:** Ross, Lawrence [Lawrence Ross is the author of the Los Angeles Times best-seller The Divine Nine: The History of African American Fraternities and Sororities. His newest book, Blackballed: The Black and White Politics of Race on America’s Campuses, is a blunt and frank look at the historical and contemporary issue of campus racism on predominantly white college campuses.] “Blackface on Halloween Isn’t About Freedom of Speech, It’s About White Supremacy.” *The Root.* October 2016. RP

**It’s Halloween, so put on your seat belts, brothers and sisters, and get ready for an onslaught of racist Halloween costumes coming from white college students who think your humanity is fair game for chuckles. The blackface paint will flow as white students think that smearing it on, along with a sign that says, “Black Lives Matter,” is the most *hilarious* thing they can do. And when they get caught, and suspended by their universities, they’ll all proclaim, “I had no idea it was racist!”** Don’t be bamboozled, my friends. Y**ou see, blackface on white college students is as much white supremacy standard operating procedure at Halloween as a Donald Trump fanatic yelling, “Lock her up!”** When I was writing my book about campus racism, *Blackballed: The Black and White Politics of Race on America’s Campuses,* **I was able to hit the archives of hundreds of predominantly white colleges and universities, and I found that there have been white students as early as the 1840s, and continuing through the 20th century until today, who have made it a point to use blackface to denigrate African Americans**. Within predominantly white fraternities and sororities, hosting racist theme parties, where white students dress like stereotypical blacks, Latinos and Asians, happens every Halloween, even as universities make concerted e orts to educate these students about why they shouldn’t do it. **And yet, as the offensive depictions of minorities flow from Instagram, Snapchat and other social media platforms, there will be those who rise up and shout, “It’s all about freedom of speech and the First Amendment,”** as though the Bill of Rights were a “Get Out of Racism” card to be played. What’s ironic is that while these people will bend over backward to note that racists (and that’s what I call any white college student who puts on blackface. Don’t like that tag? Don’t put on blackface) have the constitutional right to o end, they’re typically silent as a church mouse when it comes to people of color exercising their own freedom of speech. **The hypocrisy of Americanism means that a Colin Kaepernick, who kneels before the flag as a challenge to America to be better, to be more just, is held up as a point of ridicule, whereas the racist just melts back into society. And we see it today. At the University of Wisconsin-Madison, someone decided that he’d dress up as President Barack Obama in a prison uniform with a noose hanging around his neck. The idea? Lynch the first African-American president.** It’s the most common, almost clichéd exhibition of white supremacy on college campuses. Remember that two Sigma Alpha Epsilon fraternity members at the University of Oklahoma sang about lynching African Americans before letting them into their fraternity; and the James Meredith statue at the University of Mississippi is regularly targeted with nooses. **But what’s disturbing about the University of Wisconsin picture isn’t just that some racist decided that lynching black people was funny. It’s that the white people in the frame of the picture say and do nothing, which is reminiscent of so many pictures of real lynchings, where ordinary white people either smiled for the cameras or impassively bore witness to a horrific murder and felt nothing. These white fans in the University of Wisconsin stands apparently felt nothing. They didn’t point. They didn’t object. They just stared ahead. And that’s more troubling than the costume itself.**

### Kabay

#### Unrestricted free speech in student newspaper means students ruin their own lives.

**Kabay:** Kabay, M.E. [Contributor, Network World] “Free speech issues: Controlling content in college newspapers.” *Network World.* December 2010. RP

**The situation is not so clear in a college newspaper. A major purpose of such publications is to offer students opportunities to express their interest in journalism**, to exercise their creativity and imagination, and to use their enthusiasm. Strong, well-written opinions should be welcome, even if they attack university policies or specific actions by named individuals. **But in my opinion, encouraging or even allowing students to publish sloppy research and poorly written work does not contribute positively to their growth. Writing articles that are more appropriate for a** [**supermarket tabloid**](http://weeklyworldnews.com/area51/3075/five-classic-weekly-world-news-covers/) **("Hillary Clinton Adopts Alien Baby;" "Dick Cheney is a Robot!") than for a serious publication – and having them published on the Web for the world to read – is a pretty brutal growth experience: the writer and the quoted students will be suffering the consequences of their unflattering self-portrayals for years when potential employers search for information about them on the Web.**

#### Status quo solves – you can organize an independent newspaper or make a website.

**Kabay:** Kabay, M.E. [Contributor, Network World] “Free speech issues: Controlling content in college newspapers.” *Network World.* December 2010. RP

**If** **students feel strongly that a university administration is clamping down too strongly on their ability to speak freely, they can always organize an independent outlet for their thoughts**. For example, at my doctoral alma mater, Dartmouth College, the college publishes [several newsletters](http://www.dartmouth.edu/home/about/publications.html) under the control of the institution. **However, students dissatisfied with college control formed an independent newspaper, The** [**Dartmouth Review**](http://dartreview.com/)**, in which to express their opinions without interference from faculty and administrators. The publication lists several similar** [**independent student publications**](http://dartreview1.squarespace.com/about-us/) **at** [**Stanford**](http://stanfordreview.org/)**,** [**Cornell**](http://www.cornellreview.org/)**,**[**Princeton**](http://theprincetontory.com/main/)**, and** [**College of William and Mary**](http://www.vainformer.com/)**. Creating a Web site is no longer an expensive proposition; for example,** [**InMotion Hosting**](http://inmotionhosting.com/) **has provided excellent service for my** [**personal Web site**](http://www.mekabay.com/) **for about $7 a month, including registering my domain name.** The only issue students might have to watch out for is that university names and logos are protected intellectual property, so no one can just stick them on unofficial Web pages or newspapers without permission. But returning to the content and style of publications, all organizations offering a venue for the expression of opinion should ensure that opinions are clearly demarcated from supposedly factual reporting. Both can be justified, but muddling the two categories can lead to unfortunate results. For example, interviewing three close buddies and then making wild generalizations about an entire student body is a classic example of what not to do with [non-random sample data](http://www.mekabay.com/methodology/crime_stats_methods.pdf).

### Foxman

#### Holocaust denial is rampant in student newspapers.

**Foxman:** Foxman, Abraham [National Director, Anti-Defamation League] “Fighting Holocaust Denial in Campus Newspaper Advertisements.” 2010. RP

**Holocaust denial is an anti-Semitic conspiracy theory which claims that the well-documented destruction of six million Jews during World War II is actually a myth created by Jews to serve their own self-interested purposes. On college campuses, Holocaust denial is most often encountered in the form of advertisements submitted to student newspapers** by Bradley Smith and his Committee for Open Debate on the Holocaust (CODOH). **These ads are an affront to truth and an insult to the memory of those who were murdered by the Nazis. They create a divisive atmosphere for Jews on campus and foster conflict among students, faculty, administrators and the local community**. Hillel: The Foundation for Jewish Campus Life, and the Anti-Defamation League (ADL) have worked together for years to counteract these ads and to restore civility to the campus community when they have been published. Students, campus professionals and local community leaders necessarily play the major role in this effort.

### Bunker

#### A marketplace of ideas forces the oppressed to wait for good ideas to crowd out bad ones – this can take generations, and they can’t wait any longer.

**Bunker**: Bunker, Matthew D. [Professor, University of Alabama] “Critiquing Free Speech: First Amendment Theory and the Challenge of Interdisciplinarity.” 2001. RP

**Defenders of marketplace theory generally assert that reason, while imperfect, is the best tool humanity has, and that while people may accept false ideas over true ones in the short run, truth will emerge over the long run. One problem, of course, is that the long run can be quite long** (as Keynes put it, in the long run we are all dead) **and that false ideas can do great harm in the here and now. Another problem, as theorist Frederick Shauer pointed out, is that even if a populace is not likely to accept some false idea, great harm can nevertheless be produced by the false idea’s side effects**: “By side effects I mean those consequences that are not directly attributable to the *falsity* of the views expressed. **People may be offended, violence or disorder may ensue, or reputations may be damaged. It is foolish to suppose that the expression of opinions never causes harm.” Marketplace theorists have generally assumed, with little empirical evidence, that the benefits of an unregulated marketplace of ideas far outweigh such side effects.**

#### The idea behind the marketplace of ideas is rooted in capitalism – it’s a myth that allows minority voices to be smothered.

**Bunker**: Bunker, Matthew D. [Professor, University of Alabama] “Critiquing Free Speech: First Amendment Theory and the Challenge of Interdisciplinarity.” 2001. RP

**Other critiques of marketplace theory have focused on the analogy between it and laissez-faire economics**, which, of course, gives the theory part of its intuitive appeal (at least to some). **Much as Adam Smith’s invisible hand was claimed to produce the optimal production of competitively priced goods and services, marketplace speech theory seems, to some, to assume a similar mechanism that produces truth. Some theorists have suggested a kind of “market failure” analysis by noting that, in the real world, certain dominant groups control the mass media and tend to exclude viewpoints that challenge the status quo. Legal scholar Jerome Barron was an early advocate of the view that the marketplace is skewed away from nonmainstream ideas and that there should be a right of access to the mass media for individuals and groups advocating such ideas. Much as antitrust law operates to break up anticompetitive practices in the economic markets, perhaps courts should abandon the myth of the perfect marketplace of ideas and enforce reforms to ensure that nonmainstream groups and ideas have a sufficient voice to allow the marketplace to function properly**. Of course, recent developments toward the demassification of commu- nication, such as the rise of the Internet, may at least partially undercut the thesis that the communication channels are monopolized by a powerful elite bent on silencing “different” voices.

#### Marketplace theory focuses on the community and ignores the individual.

**Bunker**: Bunker, Matthew D. [Professor, University of Alabama] “Critiquing Free Speech: First Amendment Theory and the Challenge of Interdisciplinarity.” 2001. RP

**Marketplace theory can also be criticized because of its tendency to elevate communal values over individual ones. If the only value of unimpeded communication is its contribution to overall social welfare, it becomes quite easy to justify restrictions on speech in a sort of cost- benefit analysis that overlooks the value of the speech as pure self- expression. This exclusive focus on collective welfare can result in a** speech regime **that privileges the perspective of the hearer over that of the speaker.**

#### The alternative is to embrace the self-government theory – this entails allowing completely open speech only for an objective public purpose. [one possible alt that’s more policy based]

**Bunker**: Bunker, Matthew D. [Professor, University of Alabama] “Critiquing Free Speech: First Amendment Theory and the Challenge of Interdisciplinarity.” 2001. RP

**Alexander Meiklejohn, perhaps the leading proponent of the self- government theory, argued that the freedom of speech guaranteed by the First Amendment was the means by which democracy functioned**. For unless self-governing citizens had access to information and opinions relevant to issues about which they must ultimately make decisions, the democratic experiment could not succeed. **The speech protected by the First Amendment, Meiklejohn argued, was speech aimed at enhancing citizen participation in political issues**. “We the people who govern, must try to understand the issues which, incident by incident, face the nation,” he wrote. “We must pass judgment upon the decisions which our agents make upon those issues. And, further, we must share in devising methods by which those decisions can be made wise and effective, or, if need be, supplanted by others which promise greater wisdom and effectiveness**.”. Meiklejohn, however, had a relatively narrow view of freedom of speech. It was not, he contended, a right of each citizen to express her views on whatever matters she pleased. Instead, it was a collective right that applied only to information germane to democratic decision making. Thus, in Meiklejohn’s scheme, it is only speech for public purposes that deserves absolute protection under the First Amendment. Purely private speech is subject to regulation under a much weaker standard**. Meiklejohn used the metaphor of a New England town meeting to illustrate his theory. At the town meeting, participants must speak under rules that guarantee the relevance of their comments. The town meeting is not Hyde Park Corner, Meiklejohn noted, but is instead an institution devoted to advancing the public’s business through the moderated discussion of public policy. So it is with free speech under the First Amendment. As Meiklejohn famously put it: **The First Amendment, then, is not the guardian of unregulated talkativeness. It does not require that, on every occasion, every citizen shall take part in public debate. Nor can it give assurance that everyone shall have opportunity to do so....What is essential is not that everyone shall speak, but that everything worth saying shall be said**. Meiklejohn distinguished his self-governance theory from the marketplace of ideas theory by noting that the latter was a means to identify truth, while the former was “a device for the sharing of whatever truth has been won.” This distinction can hardly be considered as hard edged as the quoted statement suggests, however. Many commentators have noted that there is at the least some overlap between the two approaches, although, of course, the marketplace metaphor has significantly broader application across a range of human enterprises.

#### The alternative is to reject the Aff’s framing of speech as collectivistic but to recognize intrinsic value to individuals [more of a reps type alt]

**Bunker**: Bunker, Matthew D. [Professor, University of Alabama] “Critiquing Free Speech: First Amendment Theory and the Challenge of Interdisciplinarity.” 2001. RP

**One of the most thoughtful autonomy theorists is C.Edwin Baker, who has advocated what he calls a “liberty theory” of free speech**. As Baker describes the theory: “**The liberty model holds that the free speech clause protects not a marketplace, but rather an arena of indivi- dual liberty from certain types of governmental restrictions. Speech or self-expressive conduct is protected not as a means to achieve a collective good but because of its value to the individual.”** Baker’s liberty theory seeks to protect noncoercive expressive activities that are freely chosen by the speaker and that operate only through free acceptance by some listener.

### ADL

#### Speech codes on campus deter hate speech and have unique symbolic value.

**The ADL:** Anti-Defamation League [Organization dedicated to ending defamation and activism supporting this goal] “Responding to Hate Speech on Campus.” No date. RP

**Hateful speech is not only a symptom of subordination, but can also be its source**. The repetition of certain images and words reinforces ethnic and cultural imagery. Since childhood, we are all exposed to a plethora of stereotypes, stock characters, stories, narratives and plots in which women are ornaments and minorities are happy-go-lucky, stupid or licentious. **Society uses such images to create a social reality in which minorities are always at risk; one in which each new slight or injury reverberates against a history of similar ones**. After years of repetition, offenses are aimed as much at groups as at individuals. Some acts, such as painting a swastika on a Jewish student center or burning a cross on the lawn of an African-American residence, gain a power that most insults directed at individuals lack -- the power to marginalize/victimize entire groups of people. Words create characters, images, expectations and deeply rooted subconscious assumptions. Abusive words aimed at aspects of a person's core identity can seriously wound and particularly damage young people in the process of figuring our their own identity during college. The federal and state court decisions regarding university and college speech/conduct codes suggest that these codes need to be very carefully drafted in order to pass judicial muster. Whenever someone commits a hate crime or utters a prejudicial remark, it harms the victim and potentially terrorizes an entire group. Therefore, it is important to realize that there are both advantages and disadvantages to limiting speech. The arguments against campus speech codes are better understood because of court decisions. When these codes use broad and vague phrases, they limit not only destructive language, but also language that enjoys constitutional protection. It is practically impossible to draft a speech code that cannot be construed against speech no one means to ban. As a result, many institutions of higher education have dropped their existing codes or abandoned their efforts to adopt one. **However, despite the problems speech codes raise, there are some advantageous goals underlying the attempts to develop codes barring derogatory and hurtful epithets. These efforts seek to serve educational purposes and provide an expression of an institution's commitment to the defense of victims of hatred. While the speech-code issue will continue to be a battlefield in the culture wars between left and right on campus, it is necessary that presidents and administrators, with or without the aid of campus speech codes, have the willingness to take strong and directive stands when issues of bigotry arise.**

### Anderson

#### Police presence on campus causes more violence and SUPPRESSES DISCUSSION ON CAMPUS– empirics prove – that turns case.

**Anderson:** Anderson, Melinda D. [Contributor, The Atlantic] “The Rise of Law Enforcement on College Campuses.” *The Atlantic.* September 2015. RP

**A number of recent incidents, however, suggest that policing in higher education hasn’t evolved much from the violent tactics** that were used to suppress Vietnam War and civil-rights activists. **In 2011, a University of California Davis police officer was** [**caught on film pepper-spraying**](http://www.theatlantic.com/national/archive/2011/11/pepper-spray-brutality-at-uc-davis/248764/) **a row of passive, seated students participating in an Occupy Wall Street protest—an event that *The Atlantic’s* Jim Fallows wrote “**[**[rivaled] in symbolic power, if not in actual violence, images from the Kent State shootings more than 40 years ago**](http://www.theatlantic.com/national/archive/2011/11/pepper-spray-brutality-at-uc-davis/248764/)**.” And in another case that gained national notoriety, a University of Cincinnati police officer this past summer was** [**indicted for murder**](http://www.nytimes.com/2015/07/30/us/university-of-cincinnati-officer-indicted-in-shooting-death-of-motorist.html?_r=0) **for shooting an unarmed man in a traffic stop off campus. (**The 43-year-old victim was not a University of Cincinnati student.) **These incidents—and others—are increasingly raising questions about  the role of campus officers  and to whom they should report as they’re tasked with the undeniably fundamental responsibility of keeping students safe**. As with the [growth of K-12 school police](http://www.theatlantic.com/education/archive/2015/09/when-schooling-meets-policing/406348/), some experts cite the notable prevalence of violence in educational settings as accelerating the trend of campus cops, who are typically invested with full police powers. First there was [the federal Clery Act, the 1990 mandate that obligates](https://www.bostonglobe.com/metro/2012/09/24/what-clery-act/BUUayEMxlLa8MByNRmmtRP/story.html) colleges and universities to track, compile and disclose crimes on and near their campus, provide timely notification of safety threats, and report on criminal activities. For Taylor, the federal statute, which was named after a Lehigh University student who was murdered in her dorm room in the late ‘80s, was “an impetus … to move to police departments and to have armed police departments.” The massacre at Virginia Tech in 2007, the [single deadliest mass shooting in the U.S.](http://www.cnn.com/2013/09/16/us/20-deadliest-mass-shootings-in-u-s-history-fast-facts/), is also considered a driving force in the expansion of college and university police departments. **According to a recent Justice Department report on 2011-12 data, what’s been described as the** [**most comprehensive survey of its kind**](http://www.bjs.gov/content/pub/pdf/cle1112.pdf)**, the vast majority of public colleges and universities—92 percent—have sworn and armed campus officers**. Unsurprisingly, they’re much less prevalent at private colleges: Slightly over a third (38 percent) of them are equipped with their own law enforcement. Since the 2004-05 school year, the percentage of both public and private colleges nationwide using armed officers increased from 68 percent 75 percent. Yet as the numbers of armed campus police have swelled, presumably in part as an effort to satisfy the Clery Act requirements, the Justice Department data reveals a string of contradictions. The report demonstrates that crime and the presence of law enforcement on campus have an inverse relationship: Increases to the numbers of officers on campuses are paralleled by declining rates of reported crimes at the schools. **Yet even despite apparent reduction in crime, the numbers of campus officers have continued to expand—as have their responsibilities. Officers have increasingly gained the ability to arrest and patrol outside jurisdictions, and the growth to law-enforcement hires has outpaced that of student enrollment.**

#### Campus police are unaccountable to the public and spillover out of the campus.

**Anderson:** Anderson, Melinda D. [Contributor, The Atlantic] “The Rise of Law Enforcement on College Campuses.” *The Atlantic.* September 2015. RP

**Errant behaviors by campus law enforcement have long been a source of tension at two universities whose police forces are among the largest of their kind in the country. The increasing encroachment of the** [**University of Chicago Police Department**](http://safety-security.uchicago.edu/police/) **into the surrounding community led students to form the Campaign for Equitable Policing, which last fall held a** [**forum to address racial profiling**](http://thechicagocitizen.com/news/2014/nov/06/community-calls-meeting-address-university-chicago/) **of residents by UCPD officers.** [According to the university’s student newspaper](http://chicagomaroon.com/2015/04/28/rally-for-ucpd-transparency-held-after-passage-of-hb-3932-in-the-illinois-house/), UCPD’s force of 95 officers effectively patrols about 65,000 residents, the vast majority of whom (50,000) are not students. **Under current Illinois law, as a private institution the university is not required to disclose arrest reports, traffic stop data, or information concerning its off-campus patrols.** Legislation passed by the state House earlier this year demanded that University of Chicago and other campus police forces be held to the same reporting rules as city police departments. The bill stalled in the Senate, but student advocates continued to push for more transparency. As a concession, UCPD agreed to publish a daily crime log on its website, but activists say it’s inadequate. Alex Ding, a Campaign for Equitable Policing leader, [told the college paper](http://chicagomaroon.com/2015/04/28/rally-for-ucpd-transparency-held-after-passage-of-hb-3932-in-the-illinois-house/), “**We know exactly what a UCPD that is not accountable or transparent looks like. It looks like a UCPD that we know systematically racially profiles and harasses… with complete impunity.**” Similarly, public-record requests revealed that George Washington University’s campus police department was [unlawfully detaining students and investigating noise complaints at private residences](http://www.gwhatchet.com/2013/04/22/upd-faces-flak-for-off-campus-responses/) in Washington, D.C., according to a report published in the student newspaper in 2013. The article was part of a series of news reports—[some dating as far back as 2008](http://www.gwhatchet.com/2008/03/10/records-closed-upd-reports-are-closed-for-public-inspection/)—by the paper examining the jurisdictional tensions and lack of transparency in the university’s policing. **The public documents even revealed that GW’s campus force had exceeded its scope of authority to the extent that it was reprimanded by D.C.’s police force.** With the wide saturation of campus police and their expanded powers, a reform movement is taking hold**. And on the rare university campuses without armed police officers, some students are fighting to keep it that way**. Recently at Portland State University students joined Black Lives Matter activists to protest the school’s plan to arm its campus police force. Polling shows PSU students and faculty oppose armed officers on campus. While the school says armed officers will improve campus safety, student organizers disagree. “We feel we would be much safer without them, especially with the Portland Police Bureau office main precinct being about five blocks away,” Mason Ashwill [told the local Fox affiliate](http://www.kptv.com/story/30082999/psu-students-rally-against-arming-campus-security). “(There’s no) real reason for having guns on campus and it makes me feel a lot less safe.”

### Wexler

#### Protesters attempt to shut down campus engagements of speakers they believe are using hate speech– empirics confirm.

**Wexler:** Wexler, Ellen [Contributor, Insidehighered] “At two collegs, what happens when protesters obstruct free speech.” *Insidehighered.* May 2016. RP

**Sitting on the stage at DePaul University Tuesday, Milo Yiannopoulos spoke without incident for around 15 minutes**, offering his trademark inflammatory criticisms of feminism, the transgender rights movement and campus politics. And then the conversation turned to microaggressions. “They’re called microaggressions because you can’t even see them,” Yiannopoulos, a pundit at the conservative website Breitbart.com, told the crowd. “And the reason you can’t see them is because they’re not there. Nothing happens.” **Which is when something happened: blowing a whistle, a student walked down the center aisle of the auditorium until he reached the stage**. He sat on the table between Yiannopoulos and a student from the College Republicans, who was moderating the event, and began speaking to the crowd. “Please, sir,” tried the student moderator. “Sir, please.” “We’d like to ask you to please -- ” began another. **But a second student had joined the first on stage, and at once, the event became a protest.** [It wasn’t the first time](https://www.insidehighered.com/news/2016/02/19/student-protests-and-university-cancellations-follow-milo-yiannopoulos-speaking-tour) college students protested Yiannopoulos. He is a divisive figure. He is, [as a writer for Fusion put it](http://fusion.net/story/220646/the-terrifying-allure-of-gamergate-icon-milo-yiannopoulos/), “the sort of frustrating troll who, for instance, might declare his birthday World Patriarchy Day, suggest Donald Trump is ‘blacker’ than Barack Obama or, although he is gay himself, assert that gay rights have ‘made us dumber.’” **Those protesting at DePaul -- in a rally outside and during the disruption -- said Yiannopoulos was** engaged in hate speech **that made minority and other students feel unsafe and unwelcome at their own institution. They argued that Yiannopoulos shouldn't have been invited**. The DePaul protesters grew in ranks, and the College Republicans who organized the talk were unable to regain control of the event. **The event was cut short. For free speech advocates on both sides of the political spectrum, the event was fraught with tension: What happens when a protest prevents an event from taking place and blocks ideas from being heard?** DePaul’s president, the Reverend Dennis Holtschneider, was out of town during the event, but was briefed on it. “Generally, I do not respond to speakers of Mr. Yiannopoulos’s ilk, as I believe they are more entertainers and self-serving provocateurs than the public intellectuals they purport to be,” he said in a statement. And yet: “Those who interrupted the speech were wrong to do so,” he continued. “Universities welcome speakers, give their ideas a respectful hearing and then respond with additional speech countering the ideas.”

#### The Aff goes too far – they allow free speech such as disruptive protests that actively DENIES the free speech of others.

**Wexler:** Wexler, Ellen [Contributor, Insidehighered] “At two collegs, what happens when protesters obstruct free speech.” *Insidehighered.* May 2016. RP

Six days before Yiannopoulos’s speech, **a group of Jewish students at the University of California at Irvine gathered for a film screening**. Called Beneath the Helmet, the film documents the lives of five Israeli soldiers. **In the middle of screening, a group of student protesters appeared outside the classroom door. “This was not a peaceful demonstration,” said Lisa Armony, executive director of Hillel Orange County. “This was an angry, screaming, large group of people trying to get into a room of students sitting and watching a movie.” Armony called the police**. So did one of the students who had been watching the film and who had gone into the hall to make a phone call before the protesters showed up. “She got scared and tried to get back into the room to be with us,” Armony said, “and they wouldn't let her in.” According to Armony, the student hid in a nearby classroom until she felt it was safe. After police arrived, the group finished the film. According to Hillel Orange County, one police officer remained in the room until the film was over, at which point police officers escorted the students to their cars. Law enforcement officials and student affairs officials are conducting two parallel investigations. If the administration concludes that the protesters did disrupt the screening, they will be disciplined. “**We are not in the business of allowing folks to disrupt events,” said Thomas Parham, UC Irvine’s vice chancellor for student affairs. “**We do not approve of free speech that seeks to shut down anyone else’s right to free speech.**”** The Irvine chapter of Students for Justice in Palestine posted a note on its Facebook page that expressed pride in the protest but did not address the criticisms. "Today we successfully demonstrated against the presence of IDF soldiers on campus. We condemn the Israeli 'Defense' Forces, better defined as Israeli Occupation Forces (IOF), because they enforce Zionist settler colonialism and military occupation of Palestinian land by the Israeli nation-state," the statement said. "Not only does the IOF commit murders and several violences against the Palestinian people, including its use of Gaza as a laboratory for weapons testing, but it enforces militarization and policing all over the world. The United States send [sic] delegations of police forces to train in Israel by the IOF, such as the LAPD and NYPD for example. The presence of IDF and police threatened our coalition of Arab, black, undocumented, trans and the greater activist community. Thank you to all that came out and bravely spoke out against injustice." The group has since posted [a longer statement](https://ucisjp.wordpress.com/) in which it says that actions that make minority or pro-Palestinian students feel unsafe are ignored, unlike the speedy reaction to the complaints last week. "In talking about providing a safe environment for all students on campus, administration’s double standards must be acknowledged," the statement said. Jewish groups on campus had been holding a series of events that week. Administrators had anticipated some dissent, and they created a space near the events for protesting students to use. But according to Parham, the film screening was moved on campus at the last minute. If the administration had known about the event, it would have put proper security measures in place.

### Harkinson

#### Free speech on campus exists now and the alt right still popped up – in fact, campus freedom contributed – THEIR AUTHOR

**Harkinson:** Harkinson, Josh [Reporter and contributor, Mother Jones] “The Push to Enlist ‘Alt-Right’ Recruits on College Campuses.” *Mother Jones.* December 2016. RP

**Campuses have mostly stopped short of banning such groups, opting instead to counter them with protests and educational efforts. Texas A&M University is hosting a counterevent Tuesday called "Aggies United" at its football stadium featuring musicians and activists.** "I find the views of the organizer—and the speaker he is apparently sponsoring—abhorrent and profoundly antithetical to everything I believe,” **the university's president, Michael Young,** [**said**](http://www.wfaa.com/news/local/texas-news/richard-spencers-host-at-texas-am-is-the-countrys-strongest-skinhead/361102653) **in a letter to the campus community last week.** "In my judgment, those views simply have no place in civilized dialogue and conversation." But, Young added, "**we have no plans to prohibit the speaker from using the room he has rented. Freedom of speech is a First Amendment right and a core value of this university, no matter how odious the views may be."**

### Matsuda

#### Allowing unregulated free speech is a view from nowhere – those who aren’t affected believe hate speech to be harmless but those who face it WANT IT BANNED.

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

In writing this Article **I am forced to ask why the world looks so different to me from how it looks to many of the civil libertarians whom I consider my allies**. Classical thought labels ad hominem analysis a logical fallacy.35 The identity of the person doing the analysis often seems to make the difference, however, in responding to racist speech. **In advocating legal restriction of hate speech, I have found my most sympathetic audience in people who identify with target groups, while I have encountered incredulity, skepticism, and even hostility from others. This split in reaction is also evident in case studies of hate speech. The typical reaction of target-group members to an incident of racist propaganda is alarm and immediate calls for redress**.37 **The typical reaction of non-target-group members is to consider the incidents iso- lated pranks, the product of sick-but-harmless minds**.38 **This is in part a defensive reaction: a refusal to believe that real people, people just like us, are racists**.39 This disassociation leads logically to the claim that there is no institutional or state responsibility to respond to the incident. It is not the kind of real and pervasive threat that requires the state's power to quell.4

#### Racist speech on campuses spills over into ACTUAL VIOLENCE people experience.

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

**In addition to physical violence, there is the violence of the word. Racist hate messages, threats, slurs, epithets, and disparagement all hit the gut of those in the target group.** The spoken message of hatred and inferiority is conveyed on the street, in schoolyards, in popular culture and in the propaganda of hate widely distributed in this coun- try.70 **Our college campuses have seen an epidemic of racist incidents in the 1980s.71 The hate speech flaring up in our midst includes insult- ing nouns for racial groups, degrading caricatures, threats of violence, and literature portraying Jews and people of color as animal-like and requiring extermination.**

#### Hate speech violates freedom – it restricts the availability of ends and can’t be avoided

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

Racist hate messages are rapidly increasing and are widely distributed in this country using a variety of low and high technologies.82 **The negative effects of hate messages are real and immediate for the victims**.83 **Victims of vicious hate propaganda have experienced physiological symptoms and emotional distress ranging from fear in the gut, rapid pulse rate and difficulty in breathing, nightmares, post-traumatic stress disorder, hypertension, psychosis, and suicide.**84 **Professor Patricia Williams has called the blow of racist messages "spirit murder" in recognition of the psychic destruction victims experience. Victims are restricted in their personal freedom. In order to avoid receiving hate messages, victims have had to quit jobs, forgo education, leave their homes, avoid certain public places, curtail their own exercise of speech rights, and otherwise modify their behavior and de- meanor**.86 The recipient of hate messages struggles with inner turmoil. **One subconscious response is to reject one's own identity as a victim- group member**.87 As writers portraying the African-American experience have noted, the price of disassociating from one's own race is often sanity itself.88

#### The allowance of hate speech lets dominant groups experience cognitive dissonance to minorities – they’re just glad they aren’t minorities and ignore oppression.

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

The effect on non-target-group members is also of constitutional dimension. **Associational and other liberty interests of whites are cur- tailed by an atmosphere rife with racial hatred**.91 In addition, the process of dissociation can affect their mental health. **Dominant-group members who rightfully, and often angrily, object to hate propaganda share a guilty secret: their relief that they are not themselves the tar- get of the racist attack. While they reject the Ku Klux Klan, they may feel ambivalent relief that they are not African-American, Asian, or Jewish**. Thus they are drawn into unwilling complacency with the Klan, spared from being the feared and degraded thing. **Just as when we confront human tragedy - a natural disaster, a plane crash - we feel the blessing of the fortunate that distances us from the victims, the presence of racist hate propaganda distances right-thinking dominant-group members from the victims, making it harder to achieve a sense of common humanity.** **Similarly, racist propaganda forces victim-group members to view all dominant-group members with suspicion**.92 It **forces well-meaning dominant-group members to use kid-glove care in dealing with outsiders.93 This is one reason why social relations across racial lines are so rare in America.**

#### iLaw bans hate speech

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

The international community has chosen to outlaw racist hate propaganda. Article 4 of the International Convention on the Elimi- nation of All Forms of Racial Discrimination states: Article 4 States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia: (a) Shall declare as an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimi- nation, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof; (b) Shall declare illegal and prohibit organizations, and also organ- ized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organization or activities as an offence punishable by law; [and] (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.105 Under this treaty, states are required to criminalize racial hate messages. Prohibiting dissemination of ideas of racial superiority or hatred is not easily reconciled with American concepts of free speech. The Convention recognizes this conflict. Article 4 acknowledges the need for "due regard" for rights protected by the Universal Declara- tion of Human Rights and by article 5 of the Convention - including the rights of freedom of speech, association, and conscience.

#### The Aff requires state enforcement [not sure if this is a k link or more of a solvency deficit bc the Aff cant fiat enforcement]

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

**A corollary to the American position of protection of racist expres- sion is that the government must take certain affirmative steps to pre- serve that right**.167 **The state must make public facilities available on a nondiscriminatory basis to individuals and groups wishing to express their race hatred.**168 It must provide police protection to preserve or- der and protect speakers who are threatened by counter-demonstra- tors.169 **Since groups like the Klan typically draw angry opposition when they parade in public streets, this has meant that the Klan is entitled to publicly financed police escorts. Without this, the right free speech is meaningless. Angry and intolerant majorities could pre- vent unpopular minorities from using public facilities, rendering the right of free speech illusory.**

#### Lies about products commercially aren’t constitutionally protected

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

In the area of commerce and industrial relations, expression is fre- quently limited.174 False statements about products,175 suggestions that prices be fixed,176 opinions about the value of stock,177 and pro- employer propaganda during union elections,178 are all examples of expressions of ideas that are limited by the law. An instrumental anal- ysis might be that smooth operation of the entities of commerce, and the need for a stable setting for the growth of capital, have overcome the commitment to civil liberties in these instances. A doctrinal first amendment explanation is that those are examples of hard cases, rep- resenting more than the expression of an idea. Some statements are noncommunicative acts, subject to legal restraint.179 Alternatively, some would argue that many existing exceptions are simply a mis

#### No line drawing problem – hate speech is objectively defined.

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

**In order to respect first amendment values, a narrow definition of actionable racist speech is required**. Racist speech is best treated as a sui generis category, presenting an idea so historically untenable, so dangerous, and so tied to perpetuation of violence and degradation of the very classes of human beings who are least equipped to respond that it is properly treated as outside the realm of protected dis- course.197 The courts in the Skokie case198 expressed doubt that prin- ciples were available to single out racist speech for public limitation. This section attempts to construct a doctrinal and evidentiary world in which we might begin to draw the lines the Skokie courts could not imagine. The alternative to recognizing racist speech as qualitatively differ- ent because of its content is to continue to stretch existing first amend- ment exceptions, such as the "fighting words" doctrine and the "content/conduct" distinction. 99 This stretching ultimately weakens the first amendment fabric, creating neutral holes that remove protec- tion for many forms of speech. Setting aside the worst forms of racist speech for special treatment is a non-neutral, value-laden approach that will better preserve free speech. **In order to distinguish the worst, paradigm example of racist hate messages from other forms of racist and nonracist speech, three identi- fying characteristics are suggested here: 1. The message is of racial inferiority; 2. The message is directed against a historically oppressed group; and 3. The message is persecutorial, hateful, and degrading.**

#### The unique feature of colleges is to nurture students who are away from home for the first time – hate speech here is EVEN WORSE.

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

A marked rise of racial harassment, hate speech, and racially motivated violence marks our entry into the 1990s. **The epidemic of racist incidents on university campuses is a disturbing example of this.** The application of the first amendment to racist speech, once discussed hypothetically in law schools, is now debated in classrooms where hate messages have actually appeared.248 The next round of judicial opinions tangling with hate speech and the first amendment may well come from the universities. University administrators at public institutions are bound by the first amendment under state action doctrine. At private institutions, the principle of free speech is often evoked as a matter of ethics, regardless of whether the Constitution applies directly. The university case raises unique concerns. **Universities are special places, charged with pedagogy, and duty-bound to a constituency with special vulner- abilities. Many of the new adults who come to live and study at the major universities are away from home for the first time, and at a vul- nerable stage of psychological development**. Students are particularly dependent on the university for community, for intellectual development, and for self-definition. **Official tolerance of racist speech in this setting is more harmful than generalized tolerance in the com- munity-at-large**. It is harmful to student perpetrators in that it is a lesson in getting-away-with-it that will have lifelong repercussions. **It is harmful to targets, who perceive the university as taking sides through inaction**, and who are left to their own resources in coping with the damage wrought.250 **Finally, it is a harm to the goals of inclusion, education, development of knowledge, and ethics that universities exist and stand for**.251 Lessons of cynicism and hate replace lessons in critical thought and inquiry.

#### Protests on campus don’t work – Ohio proves.

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

**The campus free speech issues of the Vietnam era,252 and those evoked by the anti-apartheid movement, pit students against univer- sity administrators, multinational corporations, the U.S. military, and established governments. In the context of that kind of power imbal- ance, the free speech rights of students deserve particular deference. Unfortunately, as we know from the memory of four dead in Ohio, that deference is not always forthcoming.**

#### Minority faculty are targeted by hate speech.

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

**Racist speech on campus occurs in a vastly different power context. Campus racism targets minority students and faculty. Minority students often come to the university at risk academically, socially, and psychologically. Minority faculty are typically untenured, overburdened, isolated, or even nonexistent**, as is the case at several law schools.254 **The marginalized position of minority faculty further marginalizes minority students.**

#### Students literally can’t avoid hate speech on campus – they’re captive audiences which makes them less free.

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

**Students are analogous to the captive audience that is afforded special first amendment consideration in other contexts**. **Similarly, students who support universities through tuition and who are encouraged to think of the university as their home are involuntarily forced into a position of complicity with racism when their campus is offered to racist hate groups as a forum.**

#### Possible alt – colleges ought to maintain speech codes and consider historical oppression and specific situations when deciding punishments. Only this avoids a race-free approach.

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

**The cases discussed above are an effort to construct the conversa- tion we might have if we take on the task of delineating and penalizing the most harmful class of racist speech**. It is not an impossible conver- sation. **It is a different one, in that it suggests a highly contextualized analysis and a range of relevant evidence quite at odds with that found in typical legal inquiry.262 This evidence encompasses the particular- ity of a victim's time and place as well as the experience of a victim's group over the course of time and space**.263 **It recognizes that the ex- perience of racism, of persecution for membership in a group, makes the group's consciousness the victim's consciousness, all of which is relevant in assessing the harm of racist speech**.264 It makes rele then, knowledge as old as the Torah and as new as the back page of this morning's newspaper. It makes relevant, too, what has happened to you, to me, to an acquaintance, to a friend of a friend, to a person whom we have never met but who is tied to us as a survivor of the same hate. **This deep historical consciousness lifts us out of the neutrality trap, that trap under which many states have passed anti-mask stat- utes in a barely disguised effort to limit Ku Klux Klan activities**.265 **These statutes purportedly cover the wearing of masks in general, with no specific mention of the intent to control the Klan. Neutral reasons, such as the need to prevent pickpockets from moving unidentified through crowds, or the need to demask burglars and bank robbers, are proffered for such statutes**.266 The result of forgetting - or pretend- ing to forget - the real reason for antimask legislation is farcical. Masks are used in protest against terrorist regimes, for reasons of both symbolism and personal safety. Iranian students wearing masks and opposing human rights violations by the Shah of Iran, for example, were prosecuted under a California antimask statute. **This Article calls for an end of such unknowing.** We know why state legislatures - those quirkily populist institutions - have passed anti-mask statutes. It is more honest, and less cynically manipulative of legal doctrine, to legislate openly against the worst forms of racist speech, allowing ourselves to know what we know.

#### Legislation to end hate speech symbolizes a recognition by elites of the harms minorities face – that independently solves.

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

\*\*\*Bracketed for ableist language

**The legal response to racist propaganda provides an interesting context for examination of the relation between law and racism. Legal protection of racism is seen in these doctrinal elements (1) the limits of doctrinal imagination in creating first amendment exceptions for racist hate speech**; (2) the refusal to recognize the competing values of liberty and equality at stake in the case of hate speech; and (3) the refusal to view the protection of racist speech as a form of state action. **The limits of lawmaking imagination of judges, legislators, and other legal insiders who have considered proposals to outlaw hate propaganda is symptomatic of Derrick Bell's interest convergence** theory.268 **This limitation of imagination is a ~~disability~~, a ~~blindness~~, that prevents lawmakers from seeing that racist speech is a serious threat. Legal insiders cannot imagine a life [harmed] ~~disabled~~ in a significant way by hate propaganda.**

#### Elimination of hate speech is key to equal application of the law – dominant white groups often have recourse through other laws against hate speech but minorities don’t.

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

This limited imagination has not affected lawmakers faced with other forms of offensive speech. **Laws against dissemination of child pornography and the law of defamation and privacy are examples of areas in which the law recognizes that certain forms of expression are qualitatively different from the kind of speech deserving absolute pro- tection**.269 The **legal imagination is able to contemplate what it feels like to hear lies spread about one's professional competenc**y,270 to have one's likeness used for commercial gain without consent,271 or to hear unwanted obscenities on the radio.272 **American law has even, at times, provided a tort remedy for white plaintiffs who are "insulted" by "imputation of association with persons of a race to which there is prejudice."**273 When the legal mind understands that reputational in- terests, which are analogized to the preferred interest in propert must be balanced against first amendment interests, it recognizes the concrete reality of what happens to people who are defamed. Their lives are changed. **Their standing in the community, their opportuni- ties, their self-worth, their free enjoyment of life is limited.** To see this, and yet to fail to see that the very same things happen to the victims of racist speech, is selective vision. The selective consideration of one victim's story and not another's results in unequal application of the law. **Unlike the victims of defamation and other torts, the victims of racist speech are not representative of the population at large. In making typical legal concessions to the first amendment, we burden a range of victims**. In the case of flag-burning, we force patriots, veterans, and flag-lovers of all races to tolerate flag desecration as part of the price of freedom. **In contrast, when victims of racist speech are left to assuage their own wounds, we burden a limited class: the traditional victims of discrimination. This class already experiences diminished access to private remedies such as effective counterspeech**, and this diminished access is exacerbated by hate messages. Debasing speech discredits targets, further reducing their ability to have their speech taken seriously.274 **The application of absolutist free speech principles to hate speech**, then, is a choice to burden one group with a disproportionate share of the costs of speech promotion.275 **The principle of equality is violated by such alloca- tion.276 The more progressive principle of rectification or repara- tion277 - the obligation to repair effects of historical wrongs – is even more grossly violated.**

#### Hate speech destroys other constitutional values.

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

**The failure to hear the victim's story results in an inability to give weight to competing values of constitutional dimension**.278 The competing values recognized under international law are equality, liberty, and personality. **Each person under that scheme is entitled to basic dignity, to nondiscrimination, and to the freedom to participate fully in society.279 If there is any central principle to the Bill of Rights, surely that is it. When white supremacist organizations with histories of violence have an active, protected presence in a community, that principle is sacrificed.** All our democratic institutions are tainted as a consequence.280 As Professor Delgado has noted, the underlying first amendment values of self-fulfillment, knowledge, participation, and stable community recognized by first amendment theorists are sacri- ficed when hate speech is protected.281 **The constitutional commit- ment to equality and the promise to abolish the badges and incidents of slavery are emptied of meaning** when target-group members must alter their behavior, change their choice of neighborhood, leave their jobs, and warn their children off the streets because of hate group ac- tivity. **When the presence of the Klan deters employers from hiring target-group members, prevents citizens from socializing freely, and keeps parents from sending their children to integrated schools, the goal of nondiscrimination is moved farther away from present realities**. When hate propaganda spreads attitudes of racism and desensi- tizes potential abusers to the wrongness of violence, other more obvious goals of safety and order are sacrificed.

#### Not condemning hate speech is what implicitly views it as legitimate and lets it prosper.

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

**The third doctrinal pillar supporting racist speech is the refusal to recognize that tolerance and protection of hate group activities by the government is a form of state action. To allow an organization known for violence, persecution, race hatred, and commitment to racial supremacy to exist openly, and to provide police protection and access to public streets and college campuses for such a group, means that the state is promoting racist speech**. If not for such support, hate groups would decline in efficacy. The chilling sight of avowed racists in threatening regalia marching through our neighborhoods with full police protection is a statement of state authorization.283 **The Klan marches because marching promotes the Klan, and because of the terrorizing and inciting effect of its public displays. Open display conveys legitimacy. The government advances this effect when it protects these marches. In addition, the failure to provide a legal response limiting hate propaganda elevates liberty interests of racists over liberty interests of targets.** A member of the Georgia Bureau of Investigation, for example, once suggested to whites targeted for hate speech because of their association with African Americans that they should avoid being seen in cars with African Americans, and cease inviting African Americans to their homes.284 The effect of racist propaganda is to devalue the individual and to treat masses of people in a degraded way with no measure of individ- ual merit. This is precisely what civil libertarians oppose when the state acts.285 Because racist speech is seen as private, the connection to loss of liberty is not made. **State silence, however, is public action where the strength of the new racist groups derives from their offering legitimation and justification for otherwise socially unacceptable emo- tions of hate, fear, and aggression**.286 The need for a formal group, for a patriotic cause, and for an elevation of the doubting self are part of the traditional attraction of groups like the Klan. **Government protec- tion of the right of the Klan to exist publicly and to spread a racist message promotes the role of the Klan as a legitimizer of racism.**

#### Bans on hate speech give victims the chance to get justice and have perpetrators punished, a positive legal strategy.

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

**Further, the law's failure to provide recourse to persons who are demeaned by the hate messages is an effective second injury to that perso**n.288 **The second injury is the pain of knowing that the government provides no remedy, and offers no recognition of the dehumanizing experience that victims of hate propaganda are subjected to**.289 The government's denial of personhood by denying legal recourse may be even more painful than the initial act of hatred. One can dismiss the hate group as an organization of marginal people, but the state is the official embodiment of the society we live in. The legal realists and their progeny recognize that law formation is largely a matter of value.290 There are no inevitable results; there is no controlling logic or doctrine that can make the hard choices for us. **Reversion to discredited doctrinal absolutism carries a strong implica- tion that racist activities are supported, albeit unintentionally, by the law. In a society that expresses its moral judgments through the law, and in which the rule of law and the use of law are characteristic responses to many social phenomena,** this absence of laws against racist speech is telling.

### Wise

#### Their impacts are non-unique – we accept limits on free speech ALL THE TIME.

**Wise:** Wise, Tim [Timothy Jacob "Tim" Wise is an American anti-racism activist and writer. Since 1995, he has given speeches at over 600 college campuses across the U.S.] “Hate Speech Codes Will Not End Racism and Hate Crimes.” *Opposing Viewpoints.* 2007. RP

**On the one hand, the free speech folks ignore several examples of speech limitations that we live with everyday, and that most all would think legitimate. So, we are not free to slander others, to print libelous information about others, to engage in false advertising, to harass others, to print and disseminate personal information about others** (such as their confidential medical or financial records), to engage in speech that seeks to further a criminal conspiracy, to speak in a way that creates a hostile work environment (as with sexual harassment), to engage in plagiarized speech, or to lie under oath by way of dishonest speech. **In other words, First Amendment absolutism is not only inconsistent with Constitutional jurisprudence; it is also a** moral and practical absurdity**, as these and other legitimate limitations make fairly apparent.**

#### Completely unlimited free speech prioritizes racists over people who just want to learn – denies education to minorities.

**Wise:** Wise, Tim [Timothy Jacob "Tim" Wise is an American anti-racism activist and writer. Since 1995, he has given speeches at over 600 college campuses across the U.S.] “Hate Speech Codes Will Not End Racism and Hate Crimes.” *Opposing Viewpoints.* 2007. RP

**Secondly, the free speech rights of racists, by definition, must be balanced against the equal protection rights of those targeted by said speech. If people have the right to be educated or employed in non-hostile environments (and the courts and common sense both suggest they do), and if these rights extend to both public and private institutions (and they do), then to favor the free speech rights of racists, over and above the right to equal protection for their targets, is to trample the latter for the sake of the former**. In other words, there is always a balance that must be struck, and an argument can be made that certain kinds of racist speech create such a hostile and intimidating environment that certain limits would be not only acceptable, but *required*, as a prerequisite for equal protection of the laws, and equal opportunity. So, for example, face-to-face racist invective could be restricted, as could racist speech that carried with it the implied threat of violence. **Whether or not a neo-Nazi symbol of a movement that celebrates Adolph Hitler qualifies in that regard, is the issue to be resolved; but certainly it should not be seen as obvious that any and all speech is protected, just because of the right to free speech in the abstract**. Not to mention, does anyone honestly believe that Bellarmine, a Catholic school, would allow (or that most of the free speech absolutists would insist that they *should* allow) students to attend class with t-shirts that read: "Hey Pope Benedict: Kiss my pro-choice Catholic ass!" or "My priest molested me and all I got from my diocese was this lousy t-shirt?" No doubt such garments would be seen as disruptive, and precisely because they do not truly express a viewpoint or any substantive content, but rather, simply toss rhetorical grenades for the sake of shock value (likely part of Chira's motivation too). Chira's armband, in that regard, is quite different from a research paper, dissertation, or even a speech given on a soapbox, or article written for his own newspaper, if he had one: namely, unlike these things, the armband is not a rebuttable argument, nor does it put forth a cogent position to which "more speech" can be the obvious solution. It provokes an emotional response only, and little else.

#### Focusing on free speech is a convenient excuse to not focus on other problems on campus, such as Neo-Nazis or racists.

**Wise:** Wise, Tim [Timothy Jacob "Tim" Wise is an American anti-racism activist and writer. Since 1995, he has given speeches at over 600 college campuses across the U.S.] “Hate Speech Codes Will Not End Racism and Hate Crimes.” *Opposing Viewpoints.* 2007. RP

Sadly, perhaps the most important missing ingredient in the struggle to uproot racism, is white outrage: not at those who challenge racism (oh we've plenty of anger for them, typically), but rather, at those who are white like us, and whose racism we listen to with amusement, more so than indignation. **So, for example, notice how the free speech supporters wax eloquent about the importance of upholding Chira's right to be a racist prick, but they evince almost no hostility towards [him] and his message, beyond the obligatory throw-away line: "I completely reject his views, but will fight for his right to express them." In other words, they are far more worked up about the possibility (however slight it appears to be) that the Administration may sanction the Nazi, than they are about the fact that *there is a Nazi on their campus in the first place*. Which brings up the question: does Nazism not bother them that much? Or have they confused the valid concept of free speech with the completely invalid notion that one shouldn't even condemn racists,** out of some misplaced fealty to their rights (which notion of course relinquishes one's *own* right to speak back, and forcefully, to assholes like Chira)? **I long for the day when whites will get as angry at one of our number supporting bigotry and genocidal political movements, as we do at those who denounce the bigots and suggest that the right of students of color to be educated in a non-hostile environment is just as important as the right to spout putrid inanities. What's more, I long for the day when whites stage sit-ins to demand a more diverse and equitable college environment for students of color (which currently is threatened by rollbacks of affirmative action, for example), just as quickly as we stage them to defend free speech for fascists**, which, at Bellarmine at least, shows no signs of being endangered, so quick has the Administration been to defend Chira's liberties. In the final analysis, when whites take it upon ourselves to make racists and Nazis like Chira feel unwelcome at our colleges and in our workplaces, by virtue of making clear our own views in opposition to them, all talk of hate speech codes will become superfluous. Where anti-racists are consistent, persistent, and uncompromising, and where anti-racist principles are woven into the fabric of our institutions, there will be no need to worry about people like Chira any longer.

### Tillett-Saks

#### The assumption that free speech can solve social problems is a myth propagated by capitalism – instead of actually fighting back, we believe we can just talk about problems.

**Tillett-Saks:** Tillett-Saks, Andrew [Contributor, Counterpunch] “Neoliberal Myths.” *Counterpunch.* November 2013. RP

Every few years, protestors shout down a conservative speaker at an American University. Every few years, rancorous debate ensues. Every few years, the warring sides yell past one another; the opponents of the ‘shout-down’ uphold the sanctity of ‘free speech’ while the protestors decry the awful ‘real world impact’ of the conservative speaker’s message. In the wake of the Brown University shout-down of Ray Kelly, champion of the NYPD’s racist stop-and-frisk policy and racial profiling in general, the debate has resurfaced. Rather than talking past the anti-protestors’ arguments, they need to be addressed directly. **The prototypical argument in denouncing the protestors is not a defense of Ray Kelly’s racism. It is twofold: First, that a free-flowing discourse on the matter will allow all viewpoints to be weighed and justice to inevitably emerge victorious on its merits**. Second, that stopping a bigot from speaking in the name of freedom is self-defeating as it devolves our democratic society into tyranny. **The twofold argument against the protestors stems from two central myths of neoliberalism.** The argument for free discourse as the enlightened path to justice ignores that direct action protest is CounterPunch Magazine Tweet Share 0 Email Subscribe! 36 Pages, 6 Times a Year Search primarily responsible for most of the achievements we would consider ‘progress’ historically (think civil rights, workers’ rights, suffrage, etc.), not the free exchange of ideas. **The claim that silencing speech in the name of freedom is self-defeating indulges in the myth of the pre-existence of a free society in which freedom of speech must be preciously safeguarded, while ignoring the woeful shortcomings of freedom of speech in our society which must be addressed before there is anything worth protecting**. Critics of the protest repeatedly denounced direct action in favor of ideological debate as the path to social justice. “It would have been more effective to take part in a discussion rather than flat out refuse to have him speak,” declared one horrified student to the Brown Daily Herald. Similarly, Brown University President Christina Paxson labeled the protest a detrimental “affront to democratic civil society,” and instead advocated “intellectual rigor, careful analysis, and...respectful dialogue and discussion.” Yet the implication that masterful debate is the engine of social progress could not be more historically unfounded**. Only in the fairy tale histories of those interested in** discouraging social resistance **does ‘respectful dialogue’ play a decisive role in struggles against injustice. The eight-hour workday is not a product of an incisive question-and-answer session with American robber barons. Rather, hundreds of thousands of workers conducted general strikes during the nineteenth century, marched in the face of military gunfire at Haymarket Square in 1886, and occupied scores of factories in the 1930’s before the eight-hour work day became American law. Jim Crow was not defeated with the moral suasion of Martin Luther King, Jr.’s speeches. Rather, hundreds of thousands marched on Washington, suffered through imprisonment by racist Southern law enforcement, and repeatedly staged disruptive protests to win basic civil rights**. On a more international scale, Colonialism, that December 20, 2016 DAVE LINDORFF It Wasn’t the Russians: Hillary Lost Because She Blew Off Sanders and His Voters JOHN W. WHITEHEAD The Radical Jesus: How Would the Baby in a Manger Fare in the American Police State? CHRIS FLOYD An al Qaeda Christmas: the Touching Tale of How Hate Figures Became American Heroes ROBERT FISK Amnesia at the UN: the Massacres Samantha Power Conveniently Forgot to Mention JAN OBERG Syria’s Destruction: When Everybody Thinks Power and No One Thinks Peace ADAM BARTLEY Lessons in Witch- Hunting: a Warning somehow-oft-forgotten tyranny that plagued most of the globe for centuries, did not cease thanks to open academic dialogue. Bloody resistance, from Algeria to Vietnam to Panama to Cuba to Egypt to the Philippines to Cameroon and to many other countries, was the necessary tool that unlocked colonial shackles. Different specific tactics have worked in different contexts, but one aspect remains constant: **The free flow of ideas and dialogue, by itself, has rarely been enough to generate social progress.** It is not that ideas entirely lack social power, but they have never been sufficient in winning concessions from those in power to the oppressed. **Herein lies neoliberal myth number one—that a liberal free-market society will inexorably and inherently march towards greater freedom. To the contrary, direct action has always proved necessary**. Yet there are many critics of the protestors who do not claim Ray Kelly’s policies can be defeated with sharp debate. Instead, they argue that any protest in the name of freedom which blocks the speech of another is self-defeating, causing more damage to a free society by ‘silencing’ another than any potential positive effect of the protest. The protestors, the argument goes, tack society back to totalitarian days of censorship rather than forward to greater freedom. The protestors, however well intentioned, have pedantically thwarted our cherished liberal democracy by imposing their will on others.

#### Free speech for whom? Only the rich have the platform to use speech – the Aff just spreads neoliberal lies.

**Tillett-Saks:** Tillett-Saks, Andrew [Contributor, Counterpunch] “Neoliberal Myths.” *Counterpunch.* November 2013. RP

**The premise of this argument is neoliberal myth number two— that we live in a society with ‘freedom of speech’ so great it must be protected at all costs**. This premise stems from an extremely limited conception of ‘freedom of speech’. **Free speech should not be considered the mere ability to speak freely and inconsequentially in a vacuum, but rather the ability to have one’s voice heard equally. Due to the nature of private media and for the State Department and campaign finance in American society, this ability is woefully lopsided as political and economic barriers abound. Those with money easily have their voices heard through media and politics, those without have no such freedom. There is a certain irony (and garish privilege) of upper-class Ivy Leaguers proclaiming the sanctity of a freedom of speech so contingent upon wealth and political power**. There is an even greater irony that the fight for true freedom of speech, if history is any indicator, must entail more direct action against defenders of the status quo such as Ray Kelly. **To denounce such action out of indulgence in the neoliberal myth of a sacrosanct, already existing,** freedom of speech is to condemn the millions in this country with no meaningful voice to eternal silence.

#### The Aff puts faith in a palliative – states want us to focus on free speech as a small victory to avoid real change.

**Tillett-Saks:** Tillett-Saks, Andrew [Contributor, Counterpunch] “Neoliberal Myths.” *Counterpunch.* November 2013. RP

Every few years, an advocate of oppression is shouted down. **Every few years, the protestors are denounced. They are asked to trust open, ‘civil’ dialogue to stop oppression, despite a historical record of struggle and progress that speaks *overwhelmingly* to the contrary. They are asked to restrain their protest for freedom so to protect American freedom of speech, despite the undeniable fact that our private media and post-*Citizens United* political system hear only dollars, not the voices of the masses**. Some will claim that both sides have the same goal, freedom, but merely differ on tactics. **Yet the historical record is too clear and the growing dysfunctions in our democracy too gross to take any such claims as sincere.** In a few years, when protestors shout down another oppressive conservative, we will be forced to lucidly choose which side we are on: The oppressors or the protestors. The status quo or progress.

### Volokh

#### Hate speech is constitutionally protected.

**Volokh:** Volokh, Eugene [Contributor, The Washington Post] “No, there’s no ‘hate speech’ exception to the First Amendment.” *The Washington Post.* May 2015. RP

**I keep hearing about a supposed “hate speech” exception to the First Amendment, or statements such as, “This isn’t free speech, it’s hate speech**,” or “When does free speech stop and hate speech begin?” **But there is no hate speech exception to the First Amendment. Hateful ideas (whatever exactly that might mean) are just as protected under the First Amendment as other ideas. One is as free to condemn Islam — or Muslims, or Jews, or blacks, or whites, or illegal aliens, or native-born citizens — as one is to condemn capitalism or Socialism or Democrats or Republicans. To be sure, there are some kinds of speech that are unprotected by the First Amendment. But those narrow exceptions have nothing to do with “hate speech” in any conventionally used sense of the term. For instance, there is an exception for “fighting words” — face-to-face personal insults addressed to a specific person, of the sort that are likely to start an immediate fight. But this exception isn’t limited to racial or religious insults, nor does it cover all racially or religiously offensive statements. Indeed, when the City of St. Paul tried to specifically punish bigoted fighting words, the Supreme Court held that this selective prohibition was unconstitutional** (R.A.V. v. City of St. Paul (1992)), even though a broad ban on all fighting words would indeed be permissible. (And, notwithstanding CNN anchor Chris Cuomo’s Tweet that “hate speech is excluded from protection,” and his later claims that by “hate speech” he means “fighting words,” the fighting words exception is not generally labeled a “hate speech” exception, and isn’t coextensive with any established definition of “hate speech” that I know of.)

### Kurtz

#### Circumvention -- speech codes that allow free speech are NEVER ENFORCED but if they are, enforcement is violent.

**Kurtz:** Kurtz, Stanley [Contributor, National Review] “A Plan to Restore Free Speech on Campus.” *The Corner.* December 2015. RP

Third: “**A university administration’s responsibility for assuring free expression imposes further obligations: it must act firmly when a speech is disrupted or when disruption is attempted; it must undertake to identify disruptors, and it must make known its intentions to do so beforehand.”** The above passage is from Yale’s Woodward Report. Although the Woodward Report is official university policy at Yale, some of its central recommendations are apparently not being taken seriously. **Consider the recent controversy over freedom of speech at Yale, where a student had to be dragged out of a lecture hall by a police officer after disrupting the William F. Buckley, Jr. Program’s conference on free speech (video here). The conduct of this student would appear to be a violation of Yale’s Undergraduate Regulations on “peaceful dissent, protests, and demonstrations” (derived from the Woodward Report), which bar any member of the University community from preventing “the orderly conduct of a University function or activity, such as a lecture, meeting...or other public event,” on pain of potential suspension or expulsion. If Yale’s regulations were being properly enforced, this student would have faced a disciplinary hearing.** **Ultimately, if the facts turned out to be as they appear from the video and published reports, some sort of discipline would result — at minimum, a warning that any further such actions would bring certain suspension or expulsion. To all appearances, no such discipline has taken place.** **And appearances are important, because a core recommendation of the Woodward Report is that in order to serve as effective deterrents to further violations, sanctions for disruption of speech must be publicized.** (I have submitted a series of questions to Yale’s administration on disciplinary proceedings related to the disruption at the Buckley Program conference on free speech, and will report when I receive a reply.)

#### The plan entails rejecting endowments.

**Kurtz:** Kurtz, Stanley [Contributor, National Review] “A Plan to Restore Free Speech on Campus.” *The Corner.* December 2015. RP

**Fifth: Colleges and universities ought to adopt policies on institutional political neutrality** based on the University of Chicago’s Kalven Committee Report of 1967. **The Kalven Report explains that the ability of a university to foster political dissent and criticism by faculty and students actually depends upon the political neutrality of the institution itself.** The principles of academic freedom and institutional neutrality embodied in the Kalven Report are the surest antidote to demands that universities divest themselves of stock in fossil-fuel providers, Israeli companies, and other political targets. Advocates who attempt to inject universities into the political process by means of their endowments substantially inhibit the intellectual freedom of faculty and students who wish to explore contrary points of view. **The National Association of Scholars’ recent reports on campus sustainability and fossil-fuel divestment detail the illiberal implications of these movements**. The American Council of Trustees and Alumni includes the text of the Kalven Report and an excellent commentary by civil libertarian attorney Harvey Silverglate in its guide to academic freedom. Trustees should take note.

### Dahlen

#### Stopping hate speech on campuses is good – we should recognize most speech as included but have an exception -- THEIR AUTHOR RECUT [a2 militarism aff]

**Dahlen:** Dahlen, Nathan [Contributor, The Heights] “Political Correctness in the Age of Trump.” *The Heights.* December 5, 2016. RP

**Donald Trump has dangerously warped our understanding of the perils of political correctness**. Much of America, 71 percent in one poll, thinks political correctness has become a problem. Trump has capitalized on this mood and railed brashly and frequently against our supposedly PC culture throughout his campaign, blaming it for any number of disparate ills that plague our country. **But when Trump goes so far as to cite his disdain for political correctness as an excuse for his countless offensive and tasteless descriptions of other people, he wrongly confuses irreverence for political correctness with plain rudeness and disrespect**. Take his response to Megyn Kelly when she asked him about his long history of degrading comments toward women, many of whom he has called “slobs”, “pigs”, and “dogs”: “I think the big problem this country has is being politically correct. I’ve been challenged by so many people and I don’t, frankly, have time for total political correctness. And to be honest with you, this country doesn’t have time, either.” **By invoking PC culture to excuse his callous language and behavior throughout his campaign, Trump distracted from the way in which the phenomenon has actually become a problem. In these instances, and so many more, Trump isn’t voicing a reasoned view—he is being mean and vindictive. If our politically correct culture stops Trump and people like him from calling women “dogs”, that is, if it upholds commonly accepted norms of treating other people with respect, I hope we can all agree that it is actually a good thing. On college campuses, which pundits often point to as the worst examples of excessive political correctness,** we may actually need an even stronger PC culture**, if we define it as the suppression of hateful insults. Earlier this semester, on our own campus, someone rearranged the letters of a parking lot sign to spell an anti-gay slur**. After the election, several instances of hateful and discriminatory acts toward minorities were documented on other college campuses. But we cannot let Trump distort the term. **PC culture is actually beneficial insofar as it suppresses the use of hateful language**. The real problem is that it prevents people from expressing their views, which inhibits constructive discourse. It empowers people to ignore other arguments or instinctively condemn them, or worse, their author, as some sort of “ism” without considering the view on its own.

### Lawrence

[lotsa these cards could function as perm cards to PICs]

#### Hate speech on campus is unconstitutional – it violates *Brown v Board of Education.*

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “The Debates Over Placing Limits on Racist Speech Must Not Ignore the Damage It Does to Its Victims.” *The Chronicle of Higher Education.* 1989. RP

Above all, I am troubled that we have not listened to the real victims, that we have shown so little understanding of their injury, and that we have abandoned those whose race, gender, or sexual preference continues to make them second-class citizens. **It seems to me a very sad irony that the first instinct of civil libertarians has been to challenge even the smallest, most narrowly framed efforts by universities to provide black and other minority students with the protection the Constitution guarantees them. The landmark case of *Brown v. Board of Education* is not a case that we normally think of as a case about speech. But *Brown* can be broadly read as articulating the principle of equal citizenship.** *Brown* held that segregated schools were inherently unequal because of the message that segregation conveyed -- that black children were an untouchable caste, unfit to go to school with white children. **If we understand the necessity of eliminating the system of signs and symbols that signal the inferiority of blacks, then we should hesitate before proclaiming that all racist speech that stops short of physical violence must be defended.**

#### Hate speech is considered “fighting words” and not constitutionally protected.

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “The Debates Over Placing Limits on Racist Speech Must Not Ignore the Damage It Does to Its Victims.” *The Chronicle of Higher Education.* 1989. RP

University officials who have formulated policies to respond to incidents of racial harassment have been characterized in the press as "thought police," but such policies generally do nothing more than impose sanctions against intentional face-to-face insults. **When racist speech takes the form of face-to-face insults, catcalls, or other assaultive speech aimed at an individual or small group of persons, it falls directly within the "fighting words" exception to First Amendment protection. The Supreme Court has held that words which "**by their very utterance inflict injury **or tend to incite an immediate breach of the peace"** are not protected by the First Amendment.

#### Unlimited free speech chills deliberation – people are damaged and afraid to speak out.

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “The Debates Over Placing Limits on Racist Speech Must Not Ignore the Damage It Does to Its Victims.” *The Chronicle of Higher Education.* 1989. RP

**If the purpose of the First Amendment is to foster the greatest amount of speech, racial insults disserve that purpose. Assaultive racist speech functions as a preemptive strike. The invective is experienced as a blow, not as a proffered idea, and once the blow is struck, it is unlikely that a dialogue will follow. Racial insults are particularly undeserving of First Amendment protection because the perpetrator's intention is not to discover truth or initiate dialogue but to injure the victim. In most situations, members of minority groups realize that they are likely to lose if they respond to epithets by fighting** and are forced to remain silent and submissive.

#### Speech that creates a hostile learning or work environment is unconstitutional – empirics.

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “The Debates Over Placing Limits on Racist Speech Must Not Ignore the Damage It Does to Its Victims.” *The Chronicle of Higher Education.* 1989. RP

The *Brown* case is again instructive because it speaks directly to the psychic injury inflicted by racist speech by noting that the symbolic message of segregation affected "the hearts and minds" of Negro children "in a way unlikely ever to be undone." **Racial epithets and harassment often cause deep emotional scarring and feelings of anxiety and fear that pervade every aspect of a victim's life. *Brown* also recognized that black children did not have an equal opportunity to learn and participate in the school community if they bore the additional burden of being subjected to the humiliation and psychic assault contained in the message of segregation**. **University students bear an analogous burden when they are forced to live and work in an environment where at any moment they may be subjected to denigrating verbal harassment and assault. The same injury was addressed by the Supreme Court when it held that sexual harassment that creates a hostile or abusive work environment violates the ban on sex discrimination in employment of Title VII of the Civil Rights Act of 1964.**

#### Status quo solves – you can express your ideas but just not using language that’s racist.

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “The Debates Over Placing Limits on Racist Speech Must Not Ignore the Damage It Does to Its Victims.” *The Chronicle of Higher Education.* 1989. RP

**Carefully drafted university regulations would bar the use of words as assault weapons and leave unregulated even the most heinous of ideas when those ideas are presented at times and places and in manners that provide an opportunity for reasoned rebuttal or escape from immediate injury. The history of the development of the right to free speech has been one of carefully evaluating the importance of free expression and its effects on other important societal interests**. We have drawn the line between protected and unprotected speech before without dire results. (Courts have, for example, exempted from the protection of the First Amendment obscene speech and speech that disseminates official secrets, that defames or libels another person, or that is used to form a conspiracy or monopoly.)

#### Completely free speech lets racist ideas gain acceptance – Trump literally proves that racist Americans will accept anything.

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “The Debates Over Placing Limits on Racist Speech Must Not Ignore the Damage It Does to Its Victims.” *The Chronicle of Higher Education.* 1989. RP

**Blacks and other people of color are skeptical about the argument that even the most injurious speech must remain unregulated because, in an unregulated marketplace of ideas, the best ones will rise to the top and gain acceptance. Our experience tells us quite the opposite. We have seen too many demagogues elected by appealing to America's racism. We have seen too many good liberal politicians shy away from the issues that might brand them as being too closely allied with us.**

#### The idea that hearing hate speech makes us better able to combat it in the future makes minorities sacrificial lambs – we subject them to hate speech to learn about it but ignore harms to them.

**Lawrence:** Lawrence, Charles R. [Professor of Law, Stanford University] “The Debates Over Placing Limits on Racist Speech Must Not Ignore the Damage It Does to Its Victims.” *The Chronicle of Higher Education.* 1989. RP

**Whenever we decide that racist speech must be tolerated because of the importance of maintaining societal tolerance for all unpopular speech, we are asking blacks and other subordinated groups to bear the burden for the good of all. We must be careful that the ease with which we strike the balance against the regulation of racist speech is in no way influenced by the fact that the cost will be borne by others. We must be certain that those who will pay that price are fairly represented in our deliberations and that they are heard**. At the core of the argument that we should resist all government regulation of speech is the ideal that the best cure for bad speech is good, that ideas that affirm equality and the worth of all individuals will ultimately prevail. This is an empty ideal unless those of us who would fight racism are vigilant and unequivocal in that fight. **We must look for ways to offer assistance and support to students whose speech and political participation are chilled in a climate of racial harassment.**

### Goldberg

#### The invocation of something as “free speech” is an excuse to shut out opposing ideas – free speech becomes an inviolable right, and anybody who opposes it is the enemy.

**Goldberg:** Goldberg, Michelle [Contributor, Slate] “Is ‘Free Speech’ Becoming the New ‘All Lives Matter’?” *Slate.* November 2015. RP

**Today, the rhetoric of free speech is being abused in order to shut down dissent and facilitate bigotry**,” Laurie Penny writes in a New Statesman piece titled “The Free Speech Delusion.” At the New Yorker, in “Race and the Free-Speech Diversion,” Jelani Cobb writes, “**The freedom to offend the powerful is not equivalent to the freedom to bully the relatively disempowered**.” The Guardian’s Lindy West: “**Teaching marginalised people that their concerns will always be imperiously dismissed, always subordinated to some decontextualised free-speech absolutism is a silencing tactic.**” Kate Manne and Jason Stanley in the Chronicle of Higher Education: “**All too often,** when people depict others as threats to freedom of speech, what they really mean is, ‘Quiet!**’** ”

#### This cedes the political.

**Goldberg:** Goldberg, Michelle [Contributor, Slate] “Is ‘Free Speech’ Becoming the New ‘All Lives Matter’?” *Slate.* November 2015. RP

**Conservatives are elated by this. Right-wing news outlets have been covering each new development in the campus speech wars with salacious glee and are clearly enjoying the chance to publish headlines such as “Amherst Students Protest ‘Free Speech**.’ ” Republicans relish the opportunity to rail against political correctness on the campaign trail. When Martin, Amherst’s president, issued a statement that was broadly sympathetic to the protesters but also protective of free speech, a parody Twitter account, @AmherstUprising, tweeted, “President Martin statement is another sign that ze doesnt get it. Any mention of defending free speech is a bow to racism.” The right is, unfortunately, right to be delighted. **Their movement thrives on a sense of victimization, so having left-wing students actually come out and say that they want to ban conservative ideas confirms all their lurid suspicions about what Jonah Goldberg idiotically called Liberal Fascism**. Further, the modern right has repeatedly benefited from backlashes against college radicals. Consider, for example, the mayhem outside the 1968 Democratic National Convention in Chicago, where police brutalized raucous young demonstrators. Blind to the extent to which the country had turned on them, campus activists thought the spectacle would engender sympathy. They were wrong. “To our innocent eyes, it defied common sense that people could watch even the sliver of the onslaught that got onto television and side with the cops—which in fact was precisely what the polls showed,” Todd Gitlin, a former president of Students for a Democratic Society, wrote in The Sixties: Years of Hope, Days of Rage. “As unpopular as the war had become, the antiwar movement was detested still more—the most hated political group in America, disliked even by most of the people who supported immediate withdrawal from Vietnam.” **You cannot understand that year’s election of Richard Nixon without understanding that hatred. Ronald Reagan, too, rode to gubernatorial victory in California in 1966 on widespread antipathy toward the student protesters of what was known as the Free Speech Movement. (At the time,** free speech was very clearly a cause of the left**.)** **On the campaign trail, Reagan compared campus demonstrators with Nazis and denounced them as “beatniks, radicals, and filthy speech advocates**.” The first sign of California’s “leadership gap,” he said, was “when the so-called free speech advocates, who in truth have no appreciation for freedom, were allowed to assault and humiliate the symbol of law and order, a policemen, on the campus.” The crowds loved it. In The Invisible Bridge: The Fall of Nixon and the Rise of Reagan, historian Rick Perlstein credits Reagan’s anti-student perorations—even more than his attacks on welfare or his promise to lower taxes—for his upset victory in California. **Twenty-five years later, the right was still trying to capitalize on anti-university sentiment, but by the early 1990s, the role of free speech had changed. Political correctness had emerged, allowing conservatives to pretend to be champions of the unfettered exchange of ideas**. Rush Limbaugh made his name railing against political correctness, which he called “the greatest threat to the First Amendment in our history.” Then–President George H.W. Bush inveighed against political correctness in a 1991 commencement speech at the University of Michigan: “What began as a crusade for civility has soured into a cause of conflict and even censorship.”\* **The extent of left-wing illiberalism was often exaggerated, but the resentments stirred up by the phrase political correctness were powerful and redounded overwhelmingly to the right’s benefit**. “Within the span of a few months, PC went from an obscure phrase spoken by campus conservatives to a nationally recognized sound bite used to attack political dissenters on the left,” writes John K. Wilson in The Myth of Political Correctness: The Conservative Attack On Higher Education.

### Alderman

#### Unlimited free speech causes anti-Semitism and goes against the law.

**Alderman:** Alderman, Geoffrey [Writer, The Guardian] “Free Speech on Campus Rightly Has Limits.” *The Guardian.* April 2010. RP

Freedom of expression – and I am thinking here primarily of freedom of expression on university campuses – is a very precious but often misunderstood commodity. A fundamental purpose of any university is to pursue the truth. That is the journey upon which we who work in academia – Imean, faculty and students – have embarked. But it is a journey full of perils and snares. My job as an academic is to challenge received wisdom; to question the truth as it may be presented to me. Many people – governments, groups, vested interests – are not comfortable with this freedom. That was why, when tenure was being abolished (a most retrograde step, in my view) in 1988, the legislation (section 202 of the Education Reform Act) laid down – on the initiative of the late Roy Jenkins – that academic staff in the affected institutions (the "old" universities) were nonetheless to enjoy "freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions". This formulation did not go as far as many of us would have liked; for example, it did not extend to academic-related staff, such as IT support and library staff. It was fiercely resisted by the Thatcher government. But the House of Lords insisted on it. The Jenkins formulation does, however, cover some of the essentials of freedom of expression on campus, and it is as good a starting point as any for a discussion of the subject. It specifically refers to "controversial or unpopular opinions". Freedom of expression is meaningless if it only covers that which is popular or uncontroversial. And it makes reference to the law of the land. The freedom which I and my students enjoy is freedom "within the law". **Some academics – and some students – harbour the misapprehension that the law of the land stops at the gates of the university. It doesn't. The laws of defamation apply to everything that I say and write, even if I say them and write them within my campus**. So do the laws governing incitement to violence. And so do the laws governing incitement to racial or ethnic hatred. This is the demarcation to which I try my very best to adhere in my daily work as an academic. **I can question the truths of Christianity or Islam**. I can even question the truths of Christianity in a Christian foundation (though we should note that, in the US, this has unfortunately led to some celebrated cases of dismissal of faculty). **What I cannot do – if I am to keep my job, that is – is to incite violence against Christians or Muslims**, or indeed, against any group, whether or not faith-based. **You can attack my religion (Orthodox Judaism). I will defend your right to do so. What you cannot do is to mount your attack in such a way as to incite violence against me**. You can declare that Jewish emancipation was a mistake (some Jews on the sectarian-Orthodox fringes may actually agree with you!). What you cannot do is to mount a campaign to limit the proportion of Jews entering your university. Why? Because such a campaign would certainly fall foul of existing legislation protecting ethnic groups. You can observe your own personal boycott of Israeli institutions, goods and services if that is what you want. What you cannot do is to persuade the governing body of your institution to ban contact and co-operation with Israeli universities and/or those that work in them – because this, also, is likely to fall foul of the law. (Incidentally, for the same reason you cannot refuse to admit or teach an Israeli student, nor could I refuse to admit or teach a student who was, say, a member of the BNP or of the military wing of Hamas.) I am presenting these decisions as if they were clear cut. But life is often not that simple. **A great deal of heat has been generated over the years by the activities of academics who are Holocaust deniers. I have never believed that Holocaust denial should be a crime. But I do believe that an academic who teaches blatant falsehoods risks and deserves dismissal on the grounds of common-or-garden incompetence**. To argue that the re-establishment of the Jewish state in 1948 was a mistake seems to me to fall on the right side of the line I am attempting to draw. **But to argue – as an academic or in an academic setting – that the state of Israel should be destroyed seems, to me, to amount to an incitement to genocide. That is where free speech becomes hate speech.**

### Wilkerson

#### A perception of openness to hate speech causes Black people to go to exclusively Black colleges.

**Wilkerson:** Wilkerson, Isabel [Contributor, The New York Times] “Campus Blacks Feel Racism’s Nuances.” *The New York Times.* 1988. RP

**Recent cases of racial harassment on the nation's campuses and a general atmosphere of racial tension have become increasingly important factors in the decisions made by many black families about where to send their children to college**, according to high school counselors and black students and their families. **The perception of racial hostility is inducing more families to send their children to historically black colleges to avoid the issue altogether, while others are scrutinizing predominantly white schools more carefully to weed out those that appear less racially tolerant.** ''Our schools are getting more and more applications from students who are disgruntled,'' said Alan Kirschner, vice president for programs and public policy at the United Negro College Fund. ''These students want the chance to develop without the threat of harassment that looms over many of those campuses.'' Kharis McLaughlin, a Boston guidance counselor who works with black college-bound students, remembers the apprehension a group of black students felt when she recently took them to the University of Massachusetts at Amherst, where a racial melee occurred after the 1986 World Series. **''Some students were a bit fearful,'' Mrs. McLaughlin said. ''Whether it's right or wrong, these things will sway people if they perceive a danger. If you hear that someone had a horrible experience at a school, you're not likely to go**. That's how decisions are made.'' But the choices seem to be getting narrower for blacks looking for predominantly white schools not touched by racial turmoil. I**n the last five years, incidents of racial harassment or violence have been reported at more than 300 colleges and universities across the country, according to the National Institute Against Prejudice and Violence**, an independent, nonprofit policy research group based in Baltimore that tracks racial violence on college campuses. All types of campuses are involved, a including the University of Massachusetts at Amherst, The Citadel, Smith College, Brown University, Wesleyan University, the University of Michigan, the University of Wisconsin and the University of Florida. The incidents range from racist graffiti and hate notes to the formation of white supremacy groups and allegations of racially motivated brutality by campus police. **And at hundreds of other campuses where there may be no reports of overt acts of bigotry, black students describe a general sense of polarization and hostility. Last week, more than 1,000 students, most of them black, halted traffic with a sit-in on Broad Street in the middle of Temple University's Philadelphia campus, after members of a white fraternity, armed with baseball bats and sticks, chased three blacks they believed had broken windows of their fraternity house. Eleven students were injured in the melee, eight of them black, and students said the campus police had used excessive force and handcuffed only black students**. At Emory University in Atlanta last March, a black woman found racist epithets scrawled in her dormitory room and her stuffed animals ripped apart. The case is being investigated by the police and the Georgia Bureau of Investigation. On Sunday at Trinity College in Hartford, billiard balls were thrown through a window at a black cultural center, setting off a protest march by black students the next day. Because of such incidents, racial harassment has become a standard question facing college representatives trying to recruit black students to predominantly white campuses, and with each racial incident comes a battery of calls from concerned black parents of current or prospective students, college officials say. The officials are less inclined to say whether black applications to their schools have risen or decreased, and without access to such data at all campuses where incidents have occurred, it is impossible to quantify cause and effect. Despite the recent incidents, a big majority of the nation's one million black college students - about 80 percent - remain enrolled at the nation's predominantly white colleges, as against about 20 percent at historically black colleges, said Dr. Reginald Wilson, a senior scholar at the American Council on Education. **''There's no question in my mind that black kids are leaving white schools or not going to them in the first place because of the chilly climate**,'' he said. ''But it's not the parting of the Red Sea. There is not a flood of people leaving white schools.'' But even schools that have taken the lead in censuring acts of bigotry are finding that the perception of a hostile campus may long outlive the incidents themselves. After months of indecision, Robin Scott, a graduating senior at Cass Technical High School in Detroit, recently chose Spelman College, a historically black women's college in Atlanta, over the University of Michigan, where racist jokes broadcast on the campus radio station and the distribution of racist fliers in 1987 marred the school's reputation. The university administration has since instituted a code that specifically prohibits racial harassment and has sponsored many conferences and seminars to encourage racial tolerance. Still, Ms. Scott's recent visit to the Ann Arbor campus confirmed suspicions founded on the incidents, she said. ''The white students were cold and distant,'' she said. **''I have to deal with racism the rest of my life. Why should I deal with that in college**?'' Last fall, two members of an all-white fraternity at the University of Mississippi were stripped, bound and stranded at Rust College, a predominantly black school nearby, with racial slurs and ''KKK'' written on their chests. Although one fraternity member was expelled and four were suspended for the incident, recruiting is still difficult. ''I've been at this university 28 years, and the progress made here is absolutely remarkable,'' said Ed Meek, a spokesman for the University of Mississippi. ''Yet a problem like that negates all of that in the minds of people.'' Since then, the incidents have dogged the university in its effort to attract more black students. ''We recruit very aggressively, one on one, and that subject comes up,'' Mr. Meek said. ''We have learned in some cases to bring it up ourselves.'' It does not take long for images and perceptions to calcify, students say. ''We all have families across the nation and we go back and tell them, and these things spread,'' said Yvette Russell, a black student at the University of Massachusetts at Amherst. A recent study by the Institute Against Prejudice and Violence showed that one out of five minority students is subjected to some form of physical or psychological racial harassment every year. One out of three of those victims re-experience harassment every year. ''We're seeing a spiraling of tension,'' said Dr. Howard J. Ehrlich, a sociologist who is the research director of the institute. ''Most of the incidents are forms of psychological harassment that involve the total humiliation of the student. I have no doubt that the increase in enrollment at black colleges is a result of black students' apprehension.'' Some parents and students try to find clues about a campus's atmosphere and commitment to diversity by poring over guidebooks, checking black retention and graduation rates, going over the ratios of blacks to the total enrollment. But some parents are finding there is no way to shield their children completely. One couple in New York had settled on Brown University as the No. 1 choice for their 16-year- old daughter, Jessica, who will be putting in her applications next year. But the family was dismayed when it learned of several racial incidents at the campus, which is in Providence. ''It was a reaction of, ''Now what do we do?' '' said Jessica's mother. Could Happen Anywhere These incidents could happen anywhere, Dr. Ehrlich said, adding, ''There are no external characteristics that will tell you on what campus the incidents will occur.'' Indeed, some black students end up regretting the choice they made. ''At times I wish I had gone somewhere else so that I wouldn't have to deal with these things,'' said Derrick Young, a student at the University of Illinois, where racial tensions rose last month when the police broke up two predominantly black parties. ''I spend hours upon hours dealing with these types of issues. That's time away from studying.'' Many, like Clarence Wilson of Oklahoma City, are transferring to black institutions. Last year, Mr. Wilson left the University of Oklahoma, where white fraternity members were seen wearing T-shirts emblazoned with black stereotypical characters and where he said white friends would socialize with him in dormitory rooms but not in public. Now he is a sophomore at Xavier College in New Orleans. ''I decided it was time to leave,'' he said. ''I realized I was missing something.'' Tony Hampton, of Chicago, says he does not think he would be a graduating college senior if he had not gone to Xavier. ''Not until I came to Xavier did I get some self-esteem,'' Mr. Hampton said. But others say black students need to become accustomed to being in the minority. ''You take a risk of these things' happening whenever you go to a predominantly white school,'' said Gene Williams, a junior at Emory University in Atlanta. ''Emory is really just a microcosm of of our whole country.'' Education experts warn that merely turning to black schools is not the long-term solution. ''Those colleges don't have the capacity to handle all those kids,'' Dr. Wilson said. ''We can't use the black schools as an escape. The question is, How can we make the white schools more hospitable?, because that's where the bulk of them are going to go.''

### McConnell

#### Hate speech denies freedom – this is a hindrance we should hinder.

**McConnell:** McConnell, Reed E. [Writer and contributor, The Harvard Crimson] “Why Harvard's Hate Speech Policies Are Necessary.” *The Harvard Crimson.* April 2012. RP

**Our nation is obsessed with the concept of freedom**. The majority of U.S. citizens seem to think of theirs as the freest of all countries, and any perceived attack on this freedom is seen as a sacrilegious desecration of the Constitution, America’s holy book. **However, laws, including those in the Bill of Rights, exist for a reason—to protect citizens. The provision of freedom of speech serves, accordingly, to protect people from being punished for their ideas and beliefs. However, this freedom can backfire and end up punishing people not for their ideas but for their identities when hate speech comes into play. There must be a carefully thought-out balance between freedoms and restrictions of speech in order to create a society where citizens not only feel free to express themselves, but also are free from fear and violence.**

#### Hate speech destroys a marketplace of ideas – it leads to people having damage inflicted upon them, which leaves their voice out of the conversation.

**McConnell:** McConnell, Reed E. [Writer and contributor, The Harvard Crimson] “Why Harvard's Hate Speech Policies Are Necessary.” *The Harvard Crimson.* April 2012. RP

**The most common argument I have encountered for unrestricted free speech on college campuses is that if we prohibit people from saying certain things, they will simply never talk about them**. As a result, their prejudice and oppression—the problems that we are trying to stamp out in the first place with restrictions on speech—will continue quietly, unchecked. However, the argument goes, if we allow people to express these thoughts openly, then there will be discussion about them that leads to greater understanding. This was the view expressed by the member of the Harvard Libertarian Forum quoted in the article, and one that I think is fundamentally misguided. **There certainly should be dialogue around issues of racism, sexism, homophobia, and other forms of oppression**. If someone has prejudices, a good way to erase these prejudices can indeed be to engage in dialogue with that person in order to understand where their attitude is coming from and educate them about the moral and logical fallacies of their prejudice. **But there is also a need to protect people from having violence perpetrated against them. When someone calls a black person the “n” word out of hatred, he or she is not expressing a new idea or outlining a valuable thought. They are committing an act of violence. Speech has great power. It can—and often does—serve as a tool to marginalize and oppress people. Laws that restrict hate speech simply seek to prevent violence against marginalized**, oppressed groups in order to prevent them from becoming further marginalized and oppressed. There are freedoms to do things, and there are freedoms from things. **When our freedom to speak our mind impinges on someone’s freedom from fear, or on someone’s right to feel safe in their community, then that freedom should not stand unregulated in any group that wishes to create a safe and respectful society for its members. We cannot create a respectful learning environment at our university if students from marginalized groups feel that their administration condones acts of violence against them**. University regulations against hate speech are entirely necessary for maintaining respect and dignity among the student body, and Harvard’s policies to this end are well thought-out and fair—and certainly not worthy of protest.

### Delgado

#### Courts have upheld tort claims that hate speech can inflict psychological damage.

**Delgado:** Delgado, Richard [J.D. University of California, Berkeley, 1974. Professor of Law, UCLA Law School.] “WORDS THAT WOUND: A TORT ACTION FOR RACIAL INSULTS, EPITHETS, AND NAME-CALLING.” *Harvard Civil Rights Civil Liberties Law Review.* Volume 17. 1982. RP

**Five years ago in *Contrerasv. Crown Zellerbach, Inc.'* the Washington Supreme Court held that a Mexican-American's allegations that fellow employees had subjected him to a cam- paign of racial abuse stated a claim against his employer for the tort of outrage**. The plaintiff alleged that he had suffered "humiliation and embarrassment by reason of racial jokes, slurs and comments"and that the defendant's agents and employees had wrongfully accused him of stealing the employer's property, thereby preventing him from gaining employment and holding him up to public ridicule. Focusing upon the alleged racial abuse, the court declared that "racial epithets which were once part of common usage may not now be looked upon as 'mere insulting language."" **Eleven months later, the United States Court of Appeals for the Seventh Circuit in *Collin v. Smith* affirmed a federal district court's decision declaring unconstitutional certain or- dinances of the Village of Skokie, Illinois, which had been drafted to block a demonstration by members of the National Socialist Party of America. The village argued that the demonstration, together with the intended display of Nazi uniforms and swastikas, would inflict psychological trauma on its many Jewish citizens, some of whom had lived through the Holocaust. The court of appeals acknowledged that "many peo- ple would find [the] demonstration extremely mentally and emo- tionally disturbing**. Mentioning *Contreras,* the court also noted that Illinois recognizes the "new tort" of intentional inflic- tion of severe emotional distress, which might well include the ut- tering of racial slurs. Nevertheless, the threat of criminal penalities imposed by the ordinance was held impermissibly to abridge the plaintiffs' first amendment rights.

#### Racist hate speech furthers the legacy of slavery – it forces Black people to internalize feelings of inferiority from white institutions.

**Delgado:** Delgado, Richard [J.D. University of California, Berkeley, 1974. Professor of Law, UCLA Law School.] “WORDS THAT WOUND: A TORT ACTION FOR RACIAL INSULTS, EPITHETS, AND NAME-CALLING.” *Harvard Civil Rights Civil Liberties Law Review.* Volume 17. 1982. RP

**American society remains deeply afflicted by racism**. Long before slavery became the mainstay of the plantation society of the antebellum South, Anglo-Saxon attitudes of racial superiority left their stamp on the developing culture of colonial America. **Today, over a century after the abolition of slavery, many citizens suffer from discriminatory attitudes and practices, infecting our economic system, our cultural and political institutions, and the daily interactions of individuals**." The idea that color is a badge of inferiority and a justification for the denial of oppor- tunity and equal treatment is deeply ingrained. **The racial insult remains one of the most pervasive channels through which discriminatory attitudes are imparted. Such language injures the dignity and self-regard of the person to whom it is addressed, communicating the message that distinc- tions of race are distinctions of merit, dignity, status, and personhood.' Not only does the listener learn and internalize the messages contained in racial insults, these messages color our society's institutions and are transmitted to succeeding generations.**

#### Hate speech is intentional.

**Delgado:** Delgado, Richard [J.D. University of California, Berkeley, 1974. Professor of Law, UCLA Law School.] “WORDS THAT WOUND: A TORT ACTION FOR RACIAL INSULTS, EPITHETS, AND NAME-CALLING.” *Harvard Civil Rights Civil Liberties Law Review.* Volume 17. 1982. RP

**The need for legal redress for victims also is underscored by the fact that racial insults are intentional acts. The intentionality of racial insults is obvious: what other purpose could the insult serve? There can be little doubt that the dignitary affront of racial insults, except perhaps those that are overheard, is intentional and therefore most reprehensible. Most people today know that certain words are offensive and only calculated to wound** No other use remains for such words as "nigger," "wop," "spick," or "kike."

#### Hate speech denies moral development – children internalize self-hatred

**Delgado:** Delgado, Richard [J.D. University of California, Berkeley, 1974. Professor of Law, UCLA Law School.] “WORDS THAT WOUND: A TORT ACTION FOR RACIAL INSULTS, EPITHETS, AND NAME-CALLING.” *Harvard Civil Rights Civil Liberties Law Review.* Volume 17. 1982. RP

In addition to the harms of immediate emotional distress and infringement of dignity, **racial insults inflict psychological harm upon the victim. Racial slurs may cause long-term emotional pain because they draw upon and intensify the effects of the stigmatization, labeling, and disrespectful treatment that the victim has previously undergone.** Social scientists who have studied the effects of racism have found that speech that communicates low regard for an individual because of race "tends to create in the victim those very traits of 'inferiority' that it ascribes to him." Moreover, "even in the absence of more objective forms of discrimination-poor schools, menial jobs, and substandard housing-traditional stereotypes about the low ability and apathy of Negroes and other minorities can operate as 'self-fulfilling prophecies." **These stereotypes, portraying members of a minority group as stupid, lazy, dirty, or untrustworthy, are often communicated either explicitly or implicitly through racial insults. Because they constantly hear racist messages, minority children, not surprisingly, come to question their competence, in- telligence, and worth. Much of the blame for the formation of these attitudes lies squarely on value-laden words, epithets, and racial names.**74 **These are the materials out of which each child "grows his own set of thoughts and feelings about race." If the majority defines them and their parents as no “good, inadequate, dirty, incompetent, and stupid,” the child will find it difficult not to accept those judgements**

#### Only legal action prohibiting racial slurs creates the cultural shift needed to change attitudes.

**Delgado:** Delgado, Richard [J.D. University of California, Berkeley, 1974. Professor of Law, UCLA Law School.] “WORDS THAT WOUND: A TORT ACTION FOR RACIAL INSULTS, EPITHETS, AND NAME-CALLING.” *Harvard Civil Rights Civil Liberties Law Review.* Volume 17. 1982. RP

#### It is, of course, impossible to predict the degree of deterrence a cause of action in tort would create. However, as Professor van den Berghe has written, "for most people living in racist societies racial prejudice is merely a special kind of convenient rationaliza- tion for rewarding behavior." In other words, in racist societies "most members of the dominant group will exhibit both prejudice and discrimination," but only in conforming to social norms. Thus, "[W]hen social pressures and rewards for racism are ab- sent, racial bigotry is more likely to be restricted to people for whom prejudice fulfills a psychological 'need.' In such a tolerant milieu prejudiced persons may even refrain from discriminating behavior to escape social disapproval." Increasing the cost of racial insults thus would certainly decrease their frequency. Laws will never prevent violations altogether, but they will deter "whoever is deterrable."Because most citizens comply with legal rules, and this compliance in turn "reinforce[s] their own sentiments toward conformity," a tort action for racial insults would discourage such harmful activity through the teaching function of the law. The establishment of a legal norm "creates a public conscience and a standard for expected behavior that check overt signs of prejudice." Legislation aims first at controlling only the acts that express undesired attitudes. But "when expression changes, thoughts too in the long run are likely to fall into line."'" "Laws ...restrain the middle range of mortals who need them as a mentor in molding their habits." Thus, "If we create institu- tional arrangements in which exploitative behaviors are no longer reinforced, we will then succeed in changing attitudes [that underlie these behaviors]. ' Because racial attitudes of white Americans "typically follow rather than precede actual institutional [or legal] alteration," a tort for racial slurs is a promising vehicle for the eradication of racism.

#### Courts have empirically upheld tort claims on the basis of hate speech

**Delgado:** Delgado, Richard [J.D. University of California, Berkeley, 1974. Professor of Law, UCLA Law School.] “WORDS THAT WOUND: A TORT ACTION FOR RACIAL INSULTS, EPITHETS, AND NAME-CALLING.” *Harvard Civil Rights Civil Liberties Law Review.* Volume 17. 1982. RP

Yet, in addition to Contreras,"' **courts on at least three oc- casions have upheld causes of action or verdicts for black plain- tiffs in cases which stemmed in large part from racial insults**."2 Two of these cases are from California. In the first, Alcorn v. Anbro Engineering, Inc.,'" a black truck driver advised his supervisor that the supervisor had instructed another employee to violate union rules. The supervisor responded, "You goddam 'niggers' are not going to tell me about the rules. I don't want any 'niggers' working for me. I am getting rid of all the 'niggers'... you're fired.""4 Alcorn alleged that he had been neither rude nor insubordinate and that the supervisor's conduct was intentional,malicious, and intended to cause humiliation and mental anguish. The court held these allegations sufficient to state a cause of ac- tion for "extreme and outrageous" intentional infliction of emo- tional distress."'5 In so holding, the court emphasized the employee-employer relationship between the parties," 6 the plain- tiff's allegation of particular susceptibility to emotional distress,"17 and developments in social consciousness that render the term "nigger" particularly offensive."8 In the second case, Agarwal v. Johnson,"9 the plaintiff, a native of East India, sued his former employer and two of his former supervisors for repeated harassment. The plaintiff testified that on one occasion one of his supervisors had said to him, "You black nigger, member of an inferior race, get out and do it."'20 **The jury awarded the plaintiff general and punitive damages, and the state supreme court held that the evidence was sufficient to support the verdict for intentional infliction of emo- tional distress**.12'